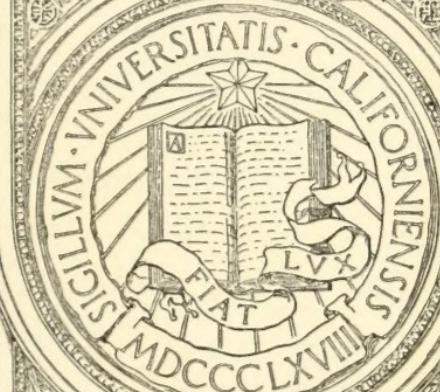


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INTERNAL-REVENUE LAWS

IN FORCE MARCH 4, 1911

WITH AN APPENDIX
CONTAINING LAWS OF A GENERAL NATURE AND
MISCELLANEOUS PROVISIONS APPLICABLE
TO THE ADMINISTRATION OF THE
INTERNAL-REVENUE LAWS

COMPILED UNDER THE DIRECTION OF
COMMISSIONER OF INTERNAL REVENUE

COMPILATION OF 1911



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INTRODUCTION.

This compilation contains the internal-revenue laws in force March 4, 1911.

The last compilation was published in 1900. Since that date many changes have been made in the law and new legislation enacted, rendering much of the matter contained in that compilation obsolete and making a new compilation very desirable.

The most important measures relating to internal revenue passed since the last compilation was issued are as follows:

I. WAR-REVENUE REPEAL ACT.—The act entitled "An act to repeal war-revenue taxation, and for other purposes," approved April 12, 1902, which, so far as it related to internal revenue, took effect July 1, 1902.

II. OLEOMARGARINE LAW.—The act of May 9, 1902, established a new rate of tax on oleomargarine. A tax of 10 cents per pound was imposed also on adulterated butter and one-fourth of 1 cent per pound on process or renovated butter.

New special taxes were also imposed on manufacturers of adulterated butter, and of process or renovated butter, and on wholesale and retail dealers in adulterated butter.

III. DENATURED ALCOHOL ACT.—The act of June 7, 1906, provided for free alcohol for use in the arts and industries, and was amended by the act of March 2, 1907.

IV. FORTIFICATION OF WINES.—The act of June 7, 1906, amended the law relative to the fortification of pure sweet wines.

V. a. SPECIAL EXCISE TAX ON CORPORATIONS.—The Payne-Aldrich tariff act entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, contained important internal-revenue legislation. The act imposed on corporations, joint-stock companies, associations, and insurance companies with certain exceptions a special excise tax equivalent to 1 per cent of their net income in excess of \$5,000.

V. b. NEW RATE OF TAX ON TOBACCO AND CIGARS.—This act also amended the law in regard to tobacco and cigars.

The body of this work consists of Title XXXV of the Revised Statutes, with amendments, and subsequent acts incorporated in their appropriate places, the obsolete and repealed sections being omitted.

Where portions of sections are printed in italics, it indicates that the words so printed are amendments. The feature in previous compilations of introducing section numbers in brackets for convenience of reference is retained; for instance [sec. 3153a]. This indicates that a new provision of law has been enacted since the Revised Statutes, amendatory of, or additional to, section 3153, which seems to belong, in its proper order, immediately after it.

The references, in previous compilations, to decisions of the courts, and the opinions of the Attorneys General, and of this office, bearing upon the construction of the sections which they follow, and explanatory thereof, are retained where applicable, with additions, as are also the references made in notes at the close of sections to other sections of the law relating to the same matter or which modify or affect the sections which they follow.

The plan adopted in previous compilations in the arrangement of the Appendix—viz, that of grouping the sections and acts relating to the same subject, instead of preserving the sequence according to the enumeration in the Revised Statutes—is followed in the present compilation.

The publication of decisions in the Internal Revenue Record (United States revenue journal) was discontinued after December, 1897.

The publication of internal-revenue decisions and circulars commencing January 1, 1898, have been published in Treasury Decisions weekly by the Treasury Department (T. D. 18758).

ROYAL E. CABELL,
Commissioner.

ABBREVIATIONS.

Abb. (U. S.)	Abbott's United States Circuit and District Court Reports.
Am. Eng. Ency. Law.	American and English Encyclopedia of Law.
App. D. C.	Court of Appeals Reports, District of Columbia.
Ben.	Benedict's United States District Court Reports.
Biss. (U. S.)	Bissell's, United States Circuit and District Court Reports.
Blatchf.	Blatchford's United States Circuit Court Reports.
Bond (U. S.)	Bond's United States Circuit and District Court Reports.
Cal.	California Reports.
Cliff. (U. S.)	Clifford's United States Circuit Court Reports.
Conn.	Connecticut Reports.
Comp. Dec.	Comptroller's Decisions.
Ct. Clms.	United States Court of Claims Reports.
Cranch (U. S.)	Cranch's United States Supreme Court Reports.
Dall (U. S.)	Dallas' United States Reports.
Deady (U. S.)	Deady's United States Circuit and District Court Reports.
Dill. (U. S.)	Dillon's United States Circuit Court Reports.
Fed. Cas.	Federal Cases United States Circuit and District Courts.
Fed. Rep.	The Federal Reporter.
Ga.	Georgia Reports.
Gray (Mass.)	Gray's Massachusetts Reports.
Hughes (U. S.)	Hughes' United States Circuit Court Reports.
Int. Rev. Rec.	Internal Revenue Record.
Lawrence Dec.	Decisions of William Lawrence, First Comptroller of the Treasury.
Low.	Lowell's United States District Court Reports.
Mackey (D. C.)	Mackey's District of Columbia Reports.
Mass.	Massachusetts Reports.
N. C.	North Carolina Reports.
N. Y.	New York Reports.
Op. Atty. Gen.	United States Attorney General's Opinions.
Otto (U. S.)	Otto's United States Supreme Court Reports.
Penn.	Pennsylvania Reports.
Pet. (U. S.)	Peter's United States Supreme Court Reports.
Saw. or Sawy. (U. S.)	Sawyer's United States Circuit and District Court Reports.
Reg.	Internal Revenue Regulations.
R. S.	United States Revised Statutes.
Stat.	United States Statutes at Large.
T. D.	Treasury Decisions.
U. S.	United States Supreme Court Reports.
Wall. (U. S.)	Wallace's United States Supreme Court Reports.
Wash. Law Rep.	Washington Law Reporter.
W. Va.	West Virginia Reports.
Wheat.	Wheaton's United States Supreme Court Reports.
Wood (U. S.)	Wood's United States Circuit Court Reports.
Woolw.	Woolworth's United States Circuit Court Reports.

COMMISSIONERS OF INTERNAL REVENUE SINCE THE ORGANIZATION OF THE INTERNAL-REVENUE OFFICE IN 1862.

GEORGE S. BOUTWELL, of Massachusetts, from July 17, 1862, to March 3, 1863, both dates inclusive.

JOSEPH J. LEWIS, of Pennsylvania, from March 18, 1863, to June 30, 1865.

WILLIAM ORTON, of New York, from July 1, 1865, to October 31, 1865.

EDWARD A. ROLLINS, of New Hampshire, from November 1, 1865, to March 10, 1869.

COLUMBUS DELANO,¹ of Ohio, from March 11, 1869, to January 2, 1871.

John W. Douglass, of Pennsylvania, was Acting Commissioner from November 1, 1870, to January 2, 1871.

ALFRED PLEASONTON, of New York, from January 3, 1871, to August 8, 1871.

JOHN W. DOUGLASS, of Pennsylvania, from August 9, 1871, to May 14, 1875.

DANIEL D. PRATT, of Indiana, from May 15, 1875, to July 31, 1876.

GREEN B. RAUM, of Illinois, from August 2, 1876, to April 30, 1883.

Henry C. Rogers, of Pennsylvania (Acting Commissioner), from May 1, 1883, to May 10, 1883.

John J. Knox, of Minnesota (Acting Commissioner), from May 11, 1883, to May 20, 1883.

WALTER EVANS, of Kentucky, from May 21, 1883, to March 19, 1885.

JOSEPH S. MILLER, of West Virginia, from March 20, 1885, to March 20, 1889.

JOHN W. MASON, of West Virginia, from March 21, 1889, to April 18, 1893.

JOSEPH S. MILLER, of West Virginia, from April 19, 1893, to November 26, 1896.

WILLIAM ST. JOHN FORMAN, of Illinois, from November 27, 1896, to December 31, 1897.

NATHAN BAY SCOTT, of West Virginia, from January 1, 1898, to February 28, 1899.

GEORGE W. WILSON, of Ohio, from March 1, 1899, to November 27, 1899.

Robt. Williams, jr., of Ohio (Acting Commissioner), from November 28, 1899, to December 19, 1900.

JOHN W. YERKES, of Kentucky, from December 20, 1900, to April 30, 1907.

JOHN G. CAPERS, of South Carolina, from June 5, 1907, to August 31, 1909.

ROYAL E. CABELL, of Virginia, from September 1, 1909.

¹ Mr. Delano was appointed and commissioned Secretary of the Interior November 1, 1870. He did not resign the office of Commissioner of Internal Revenue, and therefore became the legal holder of two offices, Commissioner of Internal Revenue and Secretary of the Interior, as he might legally do, for the duties of the two offices are distinct and compatible. (*Converse v. United States*, 21 How., 468; *United States v. Saunders*, 120 U. S., 126.)

He continued to hold the office of Commissioner of Internal Revenue until his successor was appointed and qualified, but was absent from the internal-revenue office and discharged the duties and received the salary of the office of Secretary of the Interior and of that office only.

Deputy Commissioner Douglass was Acting Commissioner of Internal Revenue in the absence of Commissioner Delano (15 Stat., 168), and continued to be so until Alfred Pleasonton was commissioned as Commissioner of Internal Revenue, January 3, 1871.

INTERNAL-REVENUE TAXATION.

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States. (Constitution of the United States, art. 1, sec. 8; *McGuire v. The Commonwealth*, 3 Wall., 387; *Pervear v. The Commonwealth*, 5 Wall., 533; *The Collector v. Day*, 11 Wall., 113, 13 Int. Rev. Rec., 141; *United States v. Singer*, 15 Wall., 111, 17 Int. Rev. Rec., 9; *Scholey v. Rew*, 23 Wall., 331.)

A general power is given to Congress to lay and collect taxes of every kind or nature without any restraint, except only on exports; but two rules are prescribed for their government, namely, uniformity and apportionment. Three kinds of taxes, to wit, duties, imposts, and excises by the first rule, and capitation, or other direct taxes, by the second rule. (*Hylton v. The United States*, 3 Dall., 171-173.)

The power of Congress to tax is a very extensive power. It is given in the Constitution with only one exception, and only two qualifications. Congress can not tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. (License tax cases, 5 Wall., 463, 6 Int. Rev. Rec., 36.)

Subject to the limitations in the Constitution the taxing power of Congress extends to all usual objects of taxation. (*Knowlton v. Moore* (1900), 178 U. S., 41; T. D. 129.)

Direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. (Income tax cases, 157 U. S., 429; 158 id., 601; *Nicol v. Ames*, 173 U. S., 509.)

A tax on bank circulation is not a direct tax, and may be laid without apportionment. (*Springer v. United States*, 102 U. S., 586; 27 Int. Rev. Rec., 78; *Veazie Bank v. Fenno*, 8 Wall., 533, 10 Int. Rev. Rec., 195.)

A tax upon the business of an insurance company is not a direct tax, but a duty or excise. (*Pacific Insurance Company v. Soule*, 7 Wall., 433.)

The tax imposed by the act of June 13, 1898 (war-revenue act), on sugar refining companies was not a direct tax but a "special excise tax." (192 U. S., 397; T. D., 760.)

No State court can by injunction or otherwise prevent Federal officers from collecting Federal taxes. The Government of the United States within its sphere is independent of State action. (*Keely v. Sanders*, 99 U. S., 443.)

The same principle which denies to a State power to raise a revenue by taxation on Federal property, or sources of revenue, or means of

carrying on its duties, forbids taxation of State revenue for Federal purposes. (12 Op. Atty. Gen., 282; *Collector v. Day*, 11 Wall., 113; *Ambrosini v. U. S.*, 187 U. S., 1; T. D. 593.)

As the States can not tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held the United States have no power under the Constitution to tax either the instrumentalities or the property of a State. (*Pollock v. Trust Co.*, 157 U. S., 584.)

A municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues. (*United States v. Railroad Co.*, 17 Wall., 322.)

The exemption of State agencies does not extend to those used by the State in carrying on an ordinary private business. (*South Carolina v. U. S.*, 199 U. S., 437; T. D. 961.)

CONSTRUCTION OF STATUTES.

Statutes in pari materia are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together. (*Harrington's Distilled Spirits*, 11 Wall., 356, 13 Int. Rev. Rec., 193; *United States v. 100 Barrels of Spirits*, 12 ibid., 153; *United States v. Cook County National Bank*, 25 ibid., 266.)

In construing statutes the fundamental rule is to get at the intention of the legislature. (*In re Matthews*, 109 Fed. Rep., 603.)

Legislative intention is the guide to true judicial interpretation. (*United States v. 100 Barrels of Spirits*, 12 Int. Rev. Rec., 153.)

A well-settled rule of interpretation is that a legislative act is to be interpreted according to the intention of the legislature apparent upon its face. (*Wilkinson v. Deland*, 2 Pet., 627.)

A statute may be construed contrary to its literal meaning when a literal construction would result in an absurdity or inconsistency, and the words are susceptible of another construction which carries out the manifest intention. (*Sutherland on Statutory Construction*, par. 323.)

Revenue laws are not, like penal acts, to be construed strictly in favor of the defendants. They are rather to be regarded as remedial in their character, passed to promote the public good, and should be so construed as to carry out the intention of the legislature in passing them. (*Cliquot's Champagne*, 3 Wall., 114; 4 Int. Rev. Rec., 58; *United States v. 28 Casks of Wine*, 7 Int. Rev. Rec., 4; *United States v. 36 Barrels of High Wines*, 12 ibid., 40; *United States v. 100 Barrels of Spirits*, 12 ibid., 153; *United States v. Stowell* 133 U. S., 1; 36 Int. Rev. Rec., 30.)

As a general rule the construction of these statutes must be such as is most favorable to their enforcement. There is no liberal interpretation in favor of the individual to be indulged in. (18 Op. Atty. Gen., 246; 31 Int. Rev. Rec., 246.) Revenue laws are to be construed liberally to carry out the purposes of their enactment (*Smythe v. Fiske*, 23 Wall., 380; *Taylor v. United States*, 3 How., 197; *United States v. Breed*, 24 Fed. Cas., 1222), and the rule of construction applicable to statutes generally, that what is implied in them is as much a part of the enactment as what is expressed, holds in regard to them. (*United States v. Hodson* (1870), 10 Wall., 395.)

They should be construed with reasonable fairness to the citizen. (*United States v. Distilled Spirits*, 10 Blatch., 428.)

Statutes should receive a sensible construction, such as will effectuate the legislative intention, and avoid, if possible, an unjust or absurd construction. (*In re Chapman*, 166 U. S., 661.)

Internal-revenue acts should be interpreted in harmony with the tariff legislation of the country. (*Taylor v. Treat* (1907), 153 Fed. Rep., 656.)

The laws providing for forfeiture by violators of revenue laws are not to be governed by the rule of strict construction applied to penal statutes in general, but are to have a reasonable construction. U. S. v. 246½ Pounds Tobacco, 103 Fed Rep., 791.)

Statutes are to receive a reasonable construction, and doubtful words and phrases are to be construed, if possible, so as not to produce mischievous results. But when the words are plain and unambiguous, there is no room for construction, and nothing is left for the court but to give them their full effect. (*The Samuel E. Spring* (1886), 27 Fed. Rep., 776.)

Statutes should be so construed, if practicable, that one section will explain and support and not defeat or destroy another section. (*Bernier v. Bernier*, 147 U. S., 242.)

It is a settled rule that where there are two consistent acts relating to the same subject, effect is to be given to both of them. (*Chicago, etc., v. United States*, 127 U. S., 406; *Landram v. United States*, 118 U. S., 81; 32 Int. Rev. Rec., 151.)

The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect. Science and skill are not required in their interpretation, except where scientific or technical terms are used.

The liability of an instrument to stamp duty, as well as the amount of such duty, is determined by the form and face of the instrument, and can not be affected by proof of facts outside of the instrument itself. (*United States v. Isham*, 17 Wall., 496; 19 Int. Rev. Rec., 84.)

Laws of doubtful or double meaning should not be too harshly construed. (*United States v. 1,412 Gallons of Distilled Spirits*, 17 Int. Rev. Rec., 86.)

Courts are not at liberty, by construction or legal fiction, to include subjects of taxation not within the terms of the law. (*United States v. Watts*, 1 Bond, 580; 1 Int. Rev. Rec., 17.)

Duties are never imposed on the citizens upon vague or doubtful interpretations. (*Hartranft v. Weigmann*, 121 U. S., 609, and cases there cited.)

Punctuation no part of the statute. (*Hammock v. Loan and Trust Company*, 105 U. S., 77, 84, 85.)

It is the duty of the court to study the whole statute, its policy, its spirit, its purpose, its language, and, giving to the words used their obvious and natural import, to read the act with these aids in such way as will best effectuate the intention of the legislature. (*United States v. 100 Barrels Spirits*, 12 Int. Rev. Rec., 154.)

Words spoken by members in debate, or the motives of members, not to be considered in construing statutes; but courts in construing a statute may, with propriety, recur to the history of the times when it was passed. (*United States v. Union Pacific Railroad Company*, 91 U. S., 72-79.)

Debates in Congress as sources of information for construction of statutes. (27 Op. Atty. Gen., 68.)

The courts may look to the history of the legislation upon the subject of which the statute treats, and the history of the times in which it was enacted, as well as the general history of the country, to determine the purpose that the Government sought to accomplish. (*Church of the Holy Trinity v. United States*, 143 U. S., 457.)

In case of ambiguity in a statute contemporaneous and uniform executive construction is regarded as decisive. (*Brown v. United States*, 113 U. S., 568; also decisions cited by Attorney General in letter to Secretary of Treasury, Nov. 17, 1885, 31 Int. Rev. Rec., 382; *Nunn v. Gerst Brewing Co.*, 99 Fed. Rep., 941.)

Where the language of a series of statutes is dubious, and open to different interpretations, the construction put upon them by the executive department charged with their execution has great and generally controlling force with the court. (*St. Paul, Minneapolis, etc., Railway Co. v. Phelps*, 137 U. S., 528; see 19 Op. Atty. Gen., 177.)

A construction of a doubtful or ambiguous statute by the executive department charged with the execution, in order to be binding upon the courts, must be long continued and unbroken. (*Merritt v. Cameron*, 137 U. S., 542.)

It is a rule well established that the construction given to a statute by those charged with the duty of executing it will be given great weight by the courts if the true construction be doubtful (*United States v. Hill*, 120 U. S., 169, and cases cited, p. 182); but this rule has no application where the statute is not ambiguous or where it will not bear the interpretation put upon it by the executive officers. (*Swift Company v. United States*, 105 U. S., 691, 695; *United States v. Graham*, 110 U. S., 219; *United States v. Tanner*, 147 U. S., 661; *United States v. Alger*, 152 U. S., 384, 397.)

The same statute may be in part constitutional and in part unconstitutional; and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid. (*Field v. Clark* (1892), 143 U. S., 649; 38 Int. Rev. Rec., 285.)

When an act of Congress is claimed to be unconstitutional, the presumption is in favor of its validity, and it is only when the question is free from any reasonable doubt that courts should hold an act in violation of that fundamental instrument upon which all the powers of the Government rest. (*Nicol v. Ames*, 173 U. S., 509.)

TIME WHEN AN ACT TAKES EFFECT.

A law of Congress which contains no provision as to the time when it shall take effect commences and takes effect as a law from the moment it receives the approbation of the President. As a general rule, it is not competent to go into the division of a day. (3 Op. Atty. Gen., 82.)

For most purposes the law regards the entire day as an indivisible unit. But when the priority of one legal right over another, depending on the order of events occurring on the same day, is involved, this rule is necessarily departed from. (*National Bank v. Burkhardt*, 100 U. S., 686.)

In the absence of proof there is a presumption that an act was signed on the first minute of the day when it took effect, but it is competent to show by proof the exact time when the law was approved by the President, and when this is made to appear the law can only be given effect from that time. (*Carriage Company v. Stengel*, 37 C. C. A., 210; 95 Fed. Rep., 637; *Nunn v. William Gerst Brewing Co.*, 99 Fed. Rep., 939.)

The case of *United States v. Iselin* (87 Fed. Rep., 194) contains a very full discussion of the subject by the Board of General Appraisers.

When necessary to determine conflicting rights courts of justice will take cognizance of the fractions of a day. (*Louisville v. Savings Bank* (1881), 104 U. S., 469.)

The act of March 3, 1875, took effect from the time it was approved and not at the commencement of the day. (*Salmon v. Burgess*, 97 U. S., 381; 25 Int. Rev. Rec., 31.)

When the act of August 28, 1894, went into effect. (*Burr v. United States*, 159 U. S., 78.)

The act of July 24, 1897, became a law only from the moment of its approval by the President, which was 6 minutes past 4 o'clock p. m. (Washington time) on July 24, 1897. (*United States v. Iselin*, 87 Fed. Rep., 194; *United States v. Stoddard*, 89 Fed. Rep., 699.) Affirmed by the United States circuit court of appeals (91 Fed. Rep., 1005; 34 C. C. A., 175). The Government, on the advice of the Attorney General, acquiesced in said decisions without seeking to prosecute any appeal to the United States Supreme Court. (T. D., 20627; T. D., 20700.)

The act of June 13, 1898, known as the "war-revenue act," took effect on the day next succeeding the day of its passage—that is, on June 14, 1898, except as otherwise provided for. (Sec. 51.)

The act of April 12, 1902 (war-revenue repeal act), took effect July 1, 1902, except as otherwise specially provided for in section 10.

The act of August 5, 1909 (Payne-Aldrich tariff act), took effect, unless otherwise specially provided, on the day following its passage.

INTERNAL-REVENUE LEGISLATION.

The Revised Statutes were compiled under an act of June 27, 1866 (14 Stat., 74).

A list of acts respecting internal-revenue duties, from the first act (act of March 3, 1791) to April 28, 1828, is published in United States Statutes at Large, volume 1.

ACTS OF CONGRESS RELATING TO INTERNAL REVENUE ENACTED SINCE JULY 4, 1861.¹

[Not including private acts, nor appropriation acts passed prior to the enactment of the Revised Statutes, June 22, 1874.]

REVISED STATUTES, TITLE XXXV, SECTIONS 3140-3465.

No reference can be had to the original statutes to control the construction of any section of the Revised Statutes when its meaning is plain, but where there is a substantial doubt as to the meaning of the language used in the revision the old law is a valuable source of information. (*United States v. Bowen*, 100 U. S., 508, 513; *United States v. Lacher*, 134 U. S., 624.)

In construing any part of the Revised Statutes it is admissible and often necessary to recur to its connection in the act of which it was originally a part. (*United States v. Hirsch*, 100 U. S., 35.)

In case of ambiguous language in the Revised Statutes or uncertainty as to the true construction to be given to the words of any section, previous acts on the same subject may be referred to and examined for light on the object and intent of Congress as shown by the course of legislation, in the same manner as statutes in pari materia relating to the same subject may always be taken, compared, and construed together. (*Wright v. United States*, 15 Ct. Cls., 87. See also *United States v. Clafin*, 97 U. S., 546, and opinion of First Comptroller Porter in Kansas claim for 5 per cent net proceeds of public lands, 1 Lawrence Dec., 43.)

No inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed. (Sec. 5600, R. S.)

An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes, approved August 5, 1861 (12 Stat., 292).

Direct tax and income. The act of March 2, 1891 (26 Stat., 822), authorized the return to the States of the direct tax collected.

An act to provide internal revenue to support the Government and to pay interest on the public debt, approved July 1, 1862 (12 Stat., 432).

Office of Internal Revenue created.

Income tax.—Under this act the tax was 3 per cent on incomes over \$600 and not over \$10,000; over \$10,000, 5 per cent. Act of March 3, 1865, over \$600 and not over \$5,000, 5 per cent; over \$5,000, 10 per cent on excess over \$5,000. Act of March 2, 1867, over \$1,000, 5 per cent. Act of July 14, 1870, over \$2,000, 2½ per cent. Income tax expired by limitation December 31, 1871. No income tax was collected under the act of June 30, 1864, as it was amended by the act of March 3, 1865, before it was collectible.

Imposed tax on cotton.

¹ On this date Congress convened in its first (extraordinary) session after the commencement of the War of the Rebellion, at which session was commenced the legislation which has since produced the present system of internal revenue taxation.

An act increasing temporarily the duties on imports, and for other purposes, approved July 14, 1862 (12 Stat., 543, 560).

Sections 24 and 25 relate to internal revenue.

An act to impose an additional duty on *sugars* produced in the United States, approved July 16, 1862 (12 Stat., 588).

Joint resolution to amend section 77 of "An act to provide internal revenue to support the Government and to pay interest on the public debt," and for other purposes, approved July 17, 1862 (12 Stat., 627).

An act to amend an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt," approved July 1, 1862. Approved December 25, 1862 (12 Stat., 632).

An act to provide ways and means for the support of the Government, approved March 3, 1863 (12 Stat., 709).

Section 7, bank circulation.

An act to amend an act entitled "An act to provide internal revenue to support the Government and [to] pay interest on the public debt," approved July 1, 1862, and for other purposes. Approved March 3, 1863 (12 Stat., 713).

An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes, approved March 3, 1863 (12 Stat., 737).

Joint resolution to provide for the printing annually of the report of the Commissioner of Internal Revenue, approved January 13, 1864 (13 Stat., 400).

An act to increase the internal revenue, and for other purposes, approved March 7, 1864 (13 Stat., 14).

An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes, approved June 30, 1864 (13 Stat., 223).

Inspection stamps required on cigars. No money value.

Joint resolution imposing a *special income duty* [for the year ending December 31 next preceding October 1, 1864], approved July 4, 1864 (13 Stat., 417).

An act to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864. Approved December 22, 1864 (13 Stat., 420).

An act to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864. Approved March 3, 1865 (13 Stat., 469).

Inspection stamps required on tobacco and snuff. No money value.

An act amendatory of certain acts imposing duties upon foreign importations, approved March 3, 1865 (13 Stat., 491).

An act authorizing the Secretary of the Treasury to appoint assistant assessors of internal revenue, approved January 15, 1866 (14 Stat., 2).

An act to declare the meaning of certain parts of the internal-revenue act, approved June 30, 1864, and for other purposes. Approved March 10, 1866 (14 Stat., 4).

An act to reduce internal taxation and to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864, and acts amendatory thereof. Approved July 13, 1866 (14 Stat., 98).

First act reducing taxation. Stamps first required on fermented liquors. Changing "Licenses" to "Special taxes."

An act to authorize the refunding of certain taxes, approved July 27, 1866 (14 Stat., 301).

An act amendatory of section 13 of an act entitled "An act to amend an act entitled 'An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes,' approved June 30, 1864," approved March 3, 1865. Approved July 27, 1866 (14 Stat., 301).

Joint resolution to prevent the further enforcement of the joint resolution (No. 77) approved July 4, 1864, against officers and soldiers of the United States who have been honorably discharged, so as to relieve them from the further payment of the special 5 per cent *income tax* imposed thereby, approved July 28, 1866 (14 Stat., 371).

Joint resolution to amend existing laws relating to internal revenue, approved February 5, 1867 (14 Stat., 565).

A resolution to provide in certain cases for the *removal of alcohol from bonded warehouses* free from internal tax, approved February 18, 1867 (14 Stat., 565).

An act to amend existing laws relating to internal revenue, and for other purposes, approved March 2, 1867 (14 Stat., 471).

Reduced taxes.

An act to exempt wrapping paper made from wood or cornstalks from internal tax, and for other purposes, approved March 26, 1867 (15 Stat., 6).

An act to prevent frauds in the collection of the tax on *distilled spirits*, approved January 11, 1868 (15 Stat., 34).

Prohibits removal of spirits from warehouse for the purpose of transportation, redistillation, or rectification, change of package, or for any other purpose, until the full tax has been paid.

An act to provide for the exemption of *cotton* from internal tax, approved February 3, 1868 (15 Stat., 34).

Reduced taxes by repealing cotton tax.

Joint resolution to provide for a commission to examine and report on *meters* for distilled spirits, approved February 3, 1868 (15 Stat., 246).

An act to exempt certain *manufactures* from internal tax, and for other purposes, approved March 31, 1868 (15 Stat., 58).

Reduced taxes.

An act for the relief of certain *exporters of rum*, approved June 25, 1868 (15 Stat., 78).

Joint resolution to correct an act entitled "An act for the relief of certain *exporters of rum*." Approved July 6, 1868 (15 Stat., 256).

An act imposing taxes on DISTILLED SPIRITS and TOBACCO, and for other purposes, approved July 20, 1868 (15 Stat., 125).

Stamps first required on distilled spirits. Revised the entire law relative to spirits and tobacco. Reduced taxation. Tax on cigars and tobacco payable by stamps. Inspectors abolished except inspectors of tobacco. Supervisors and detectives authorized.

An act to correct an error in the enrollment of the "Act imposing taxes on distilled spirits and tobacco, and for other purposes." Approved July 27, 1868 (15 Stat., 238).

An act to amend an act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20, 1868. Approved December 22, 1868 (15 Stat., 266).

An act to allow DEPUTY COLLECTORS of internal revenue, acting as collectors, the pay of collectors, and for other purposes, approved March 1, 1869 (15 Stat., 282).

An act to amend an act entitled "An act to exempt certain manufacturers from internal tax, and for other purposes," approved March 31, 1868. Approved March 3, 1869 (15 Stat., 336).

"Joint resolution to supply omissions in the enrollment of certain appropriation acts, approved March third, eighteen hundred and sixty-nine," approved March 29, 1869 (16 Stat., 52).

An act to amend an act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20, 1868. Approved April 10, 1869 (16 Stat., 41).

Joint resolution in relation to *female clerks* in the Internal Revenue Bureau, approved June 29, 1870 (16 Stat., 382).

An act to define the intent of an act entitled "An act to allow DEPUTY COLLECTORS of internal revenue, acting as collectors, the pay of collector[s], and for other purposes," approved March 1, 1869. Approved July 1, 1870 (16 Stat., 179).

A resolution to determine the construction of an act to provide internal revenue to support the Government, [to pay interest on the public debt.] and for other purposes, approved June 30, 1864. Approved July 13, 1870 (16 Stat., 387).

An act to reduce internal taxes, and for other purposes, approved July 14, 1870 (16 Stat., 256).

Repealed taxes on gross receipts, legacies and successions, passports, and special taxes, except those relating to spirits, fermented liquors, and tobacco, also taxes on sales. Income tax to expire December 31, 1871.

An act to amend existing laws relating to internal revenue, approved July 14, 1870 (16 Stat., 274).

An act to amend section 4 of the act of March 31, 1868, approved July 14, 1870 (16 Stat., 277).

Joint resolution to construe the act of March 31, 1868, approved July 14, 1870 (16 Stat., 388).

An act relating to internal taxes, approved March 3, 1871 (16 Stat., 475).

Joint resolution to amend section 4, act of July 20, 1868, approved March 3, 1871 (16 Stat., 601).

An act to repeal the paragraphs of *Schedule C* of the internal-revenue acts imposing taxes on *canned meats, fish, and certain other articles*, approved March 5, 1872 (17 Stat., 36).

An act to provide for the abatement or repayment of taxes on *distilled spirits in bond destroyed by casualty*, approved May 27, 1872 (17 Stat., 162).

An act to reduce duties on imports and to reduce internal taxes, and for other purposes, approved June 6, 1872 (17 Stat., 238), taking effect October 1, 1872.

Stamp duties on instruments, except bank checks, repealed. Moieties abolished. Uniform rate of 20 cents per pound on tobacco instead of the two rates, 16 and 32 cents. Tax on spirits, 10 cents per gallon.

An act for the reduction of officers and expenses of the internal revenue, approved December 24, 1872 (17 Stat., 401).

Assessors abolished. Reduces collection districts.

An act to remit the excise taxes upon *alcohol* used by universities and colleges for *scientific purposes*, approved February 21, 1873 (17 Stat., 468).

An act to amend an act entitled "An act to reduce duties on imports and to reduce internal taxes, and for other purposes," approved June 6, 1872, and for other purposes. Approved March 3, 1873. Section 5 of this act amends section 55 of the act of July 20, 1868, as amended by the act of June 6, 1872 (17 Stat., 559).

An act to amend an act entitled "An act to prevent smuggling, and for other purposes," approved July 18, 1866. Approved March 3, 1873 (17 Stat., 580).

An act relating to the fractional parts of a barrel containing *fermented liquors*, approved March 3, 1873 (17 Stat., 586).

An act to place at the disposal of the Commissioner of Internal Revenue certain copies of the new compilation of internal-revenue laws. Approved March 3, 1873 (17 Stat., 621).

Reprint of internal-revenue laws from August 5, 1861, to March 3, 1873. Submitted in response to order of the Senate of May 16, 1898, for use in consideration of House bill 10100, to provide ways and means to meet war expenditures.

Senate Report No. 1123 55th Cong., 2d sess.

ACTS, ETC., SINCE DECEMBER 1, 1873, THE DATE TO WHICH THE REVISED STATUTES OF THE UNITED STATES RELATE. (See sec. 5595, R. S.)

[Supplement No. 1, Revised Statutes, contains legislation of 1874-1891, Forty-third to Fifty-first Congresses, inclusive. Supplement No. 2 (parts 1 to 9) contains legislation of 1892-1901, Fifty-second to Fifty-sixth Congresses, inclusive.]

Forty-third Congress.

An act to so amend the laws relative to internal revenue as to allow *distillery warehouses* to be continued in use after changes have occurred in the management of the business, approved January 8, 1874 (18 Stat., 2). [Sec. 3271a.]

An act to abolish the office of *Deputy Commissioner* of Internal Revenue, approved January 29, 1874 (18 Stat., 6).

Note to section 322, R. S.

An act to facilitate the *exportation of distilled spirits*, and amendatory of the acts in relation thereto, approved June 9, 1874 (18 Stat., 64). [Sec. 3330.]

An act explanatory of the act of June 30, 1864. Became law June 18, 1874 (18 Stat., 80).

An act for the relief of *savings institutions* having no capital stock and doing business solely for the benefit of depositors, approved June 22, 1874 (18 Stat., 194).

An act to provide for the stamping of *unstamped instruments*, documents, or papers, approved June 23, 1874 (18 Stat., 250).

An act to amend existing customs and internal-revenue laws, and for other purposes, approved February 8, 1875 (18 Stat., 309).

An act to correct errors and to supply omissions in the Revised Statutes of the United States, approved February 18, 1875 (18 Stat., 316).

The changes made by this act were incorporated into the second edition, Revised Statutes, in their proper place.

An act to further protect the sinking fund and provide for the exigencies of the Government, approved March 3, 1875 (18 Stat., 339).

Increased tax on spirits to 90 cents per gallon and tobacco to 24 cents per pound; cigars to \$6 per thousand.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1876, and for other purposes, approved March 3, 1875 (18 Stat., 352).

Section 12 of "An act making appropriations to supply deficiencies in the appropriations for fiscal years ending June thirtieth, eighteen hundred and seventy-five, and prior years, and for other purposes," approved March 3, 1875 (18 Stat., 419).

An act to amend section numbered 3342 of the Revised Statutes of the United States, in relation to *affixing stamps on brewers' casks*, approved March 3, 1875 (18 Stat., 484).

An act to authorize the Secretary of the Treasury to adjust and remit certain taxes and penalties claimed to be due from mining and other corporations, and for other purposes, approved March 3, 1875 (18 Stat., 507).

Forty-fourth Congress.

An act to extend the time for *stamping unstamped instruments*, approved February 25, 1876 (19 Stat., 5).

Time extended to January 1, 1877.

Joint resolution concerning *special-tax stamps*, approved May 8, 1876 (19 Stat., 213). [Sec. 3233a.]

An act to define the tax on *fermented or malt liquors*, approved May 13, 1876 (19 Stat., 53). [Sec. 3337a.]

An act relative to the redemption of *unused stamps*, approved July 12, 1876 (19 Stat., 88).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and for other purposes, approved August 15, 1876 (19 Stat., 152).

Supervisors abolished. Reduced number of collection districts.

An act to perfect the revision of the statutes of the United States, and of the statutes relating to the District of Columbia, approved February 27, 1877 (19 Stat., 240).

Changes made by this act were incorporated in the second edition Revised Statutes.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes, approved March 3, 1877 (19 Stat., 303).

Reduced number of collection districts.

An act relating to the production of *fruit brandy* and to punish frauds connected with the same, approved March 3, 1877 (19 Stat., 393).

Forty-fifth Congress.

Joint resolution declaring that a reduction of the tax on *distilled spirits* is inexpedient, approved February 18, 1878 (20 Stat., 248).

Joint resolution to prescribe the time for the payment of the tax on *distilled spirits*, and for other purposes, approved March 28, 1878 (20 Stat., 249).

Repealed by the act of May 28, 1880.

An act to extend the provisions of section 3297 of the Revised Statutes to other institutions of learning, approved May 3, 1878 (20 Stat., 48). [Sec. 3297a.]

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1879, and for other purposes, approved June 19, 1878 (20 Stat., 187). [Ses. 3157a, 3463a.]

An act to amend section 5497 of the Revised Statutes, relating to *embezzlement* by officers of the United States, approved February 3, 1879 (20 Stat., 280). [Sec. 5497, Sec. 96, Criminal Code, Appendix.]

An act to amend the laws relating to internal revenue, approved March 1, 1879 (20 Stat., 327).

Reduced tax on tobacco and many important changes made.

Forty-sixth Congress.

An act relating to *vinegar factories* established and operated prior to March 1, 1879, approved June 14, 1879 (21 Stat., 20). [Sec. 3282.]

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes, approved June 21, 1879 (21 Stat., 23).

Salary of storekeepers limited.

An act providing for the binding of the Internal-Revenue Laws and Manual, approved June 27, 1879 (21 Stat., 35).

An act authorizing an allowance for *loss by leakage* or casualty of spirits withdrawn from distillery warehouses for exportation, approved December 20, 1879 (21 Stat., 59).

An act to amend the laws in relation to internal revenue, approved May 28, 1880 (21 Stat., 145).

"Carlisle bill." Repealed provision charging 10 cents for stamps other than tax-paid or export.

An act to amend sections 3385 and 3357 of the Revised Statutes of the United States, approved June 9, 1880 (21 Stat., 167).

An act to amend the sixth subdivision of section 3244 of the Revised Statutes of the United States, approved June 16, 1880 (21 Stat., 291).

Forty-seventh Congress.

An act to repeal so much of section 3385 of the Revised Statutes as imposes an export tax on *tobacco*, approved August 8, 1882 (22 Stat., 372).

An act to amend section 3362 of the Revised Statutes relating to the tax on *perique tobacco*, approved January 9, 1883 (22 Stat., 401).

An act relating to *exportation of tobacco*, snuff, and cigars, in bond, free of tax to adjacent foreign territory, approved January 13, 1883 (22 Stat., 402).

An act to reduce internal-revenue taxation, and for other purposes, approved March 3, 1883 (22 Stat., 488).

Reduced tax on tobacco to 8 cents per pound and repealed stamp taxes on bank checks, matches, perfumery, medicinal preparations, and other articles imposed by Schedule A following section 3437, Revised Statutes.

Forty-eighth Congress.

An act to limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws, approved July 5, 1884 (23 Stat., 122).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1885, and for other purposes, approved July 7, 1884 (23 Stat., 172).

Similar act for fiscal year ending June 30, 1886, approved March 3, 1885 (23 Stat., 404).

Forty-ninth Congress.

An act to amend section 3336 of the Revised Statutes of the United States, approved April 29, 1886 (24 Stat., 15).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1887, and for other purposes, approved July 31, 1886 (24 Stat., 187).

An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of *oleomargarine*, approved August 2, 1886 (24 Stat., 209).

An act to provide for the *inspection of tobacco, cigars, and snuff*, and to repeal section 3151 of the Revised Statutes, approved August 4, 1886 (24 Stat., 218).

Fiftieth Congress.

An act to prevent the manufacture or sale of *adulterated food or drugs* in the District of Columbia, approved October 12, 1888 (25 Stat., 549).

Practically repealed by the "Act relating to the adulteration of foods and drugs in the District of Columbia," approved February 17, 1898 (30 Stat., 246).

An act to provide for warehousing *fruit brandy*, approved October 18, 1888 (25 Stat., 560).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1890, and for other purposes, approved March 2, 1889 (25 Stat., 939).

Fifty-first Congress.

An act to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1890, and for other purposes, approved April 4, 1890 (26 Stat., 34).

An act to amend section 3354, Revised Statutes, approved June 18, 1890 (26 Stat., 161).

Removal of beer for bottling by a pipe line or conduit.

An act to provide for the exportation of fermented liquor in bond without payment of internal-revenue tax, approved June 18, 1890 (26 Stat., 162).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1891, approved July 11, 1890 (26 Stat., 228).

An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1890, and for prior years, and for other purposes, approved September 30, 1890 (26 Stat., 504).

An act to reduce the revenue and equalize the duty on imports, and for other purposes, approved October 1, 1890 (26 Stat., 567).

“McKinley bill.” Imposed tax on opium, authorized bounty on sugar, reduced tax on tobacco to 6 cents per pound, special-tax year to commence July 1.

An act to authorize the payment of drawback or rebate in certain cases, approved December 18, 1890 (26 Stat., 689).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1892, approved March 3, 1891 (26 Stat., 862).

An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1892, approved March 3, 1891 (26 Stat., 1050).

Removal of distilled spirits free of tax for making sugar from sorghum.

Fifty-second Congress.

An act to prohibit the coming of Chinese persons into the United States, approved May 5, 1892 (27 Stat., 25).

The “Geary bill.” Certificates of residence to be obtained from collector of internal revenue. This act was amended by the act, approved November 3, 1893, known as the “McCreary bill” (28 Stat., 7). This matter is now under the Commissioner General of Immigration. (Sec. 7, act of Feb. 14, 1903, 32 Stat., 828).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1893, and for other purposes, approved July 16, 1892 (27 Stat., 183).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1894, and for other purposes, approved March 3, 1893 (27 Stat., 572).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1894, and for other purposes, approved March 3, 1893 (27 Stat., 675).

Fifty-third Congress.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes, approved July 31, 1894 (28 Stat., 162).

Contains “THE DOCKERY BILL.”

An act to provide for the collection of internal revenue, and for other purposes, approved August 27, 1894 (28 Stat., 508).

An act to reduce taxation, to provide revenue for the support of the Government, and for other purposes, became a law without the President's approval, in effect August 28, 1894 (28 Stat., 509).

"**THE WILSON BILL**" imposed an income tax, since declared unconstitutional. Tax, 2 per cent upon incomes over \$4,000. Law declared unconstitutional May 20, 1895 (*Pollock v. The Farmers' Loan & Trust Company*, and *Hyde v. The Continental Trust Co., of N. Y.*), on the ground that the tax was a direct tax (158 U. S., 601).

The court had previously held the law was unconstitutional as far as it sought to tax rents and income from real estate, and income from State, county, and municipal bonds (157 U. S., 429). Reimposed tax on playing cards. Repealed bounty on sugar.

(Became a law August 27 according to Supp. R. S., vol. 2, p. 334. See *United States v. Burr*, 159 U. S., 78.)

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes, approved March 2, 1895 (28 Stat., 910).

Bounty on sugar—payment on production prior to August 28, 1894.

Fifty-fourth Congress.

An act to repeal section 61 of an act to reduce taxation, to provide revenue for the Government, and for other purposes, which became a law August 28, 1894, approved June 3, 1896 (29 Stat., 195).

Repeals provision exempting alcohol used in the arts from tax.

An act to amend section 3255 of the Revised Statutes of the United States, concerning the distilling of brandy from fruits, approved June 3, 1896 (29 Stat., 195).

An act defining *cheese*, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of "*filled cheese*," approved June 6, 1896 (29 Stat., 253).

An act to allow the *bottling of distilled spirits in bond*, approved March 3, 1897 (29 Stat., 626).

An act to amend section 40 of "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, so as to authorize the sale of forfeited domestic smoking opium to the highest bidder, approved March 3, 1897 (29 Stat., 695).

Fifty-fifth Congress.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes, approved June 4, 1897 (30 Stat., 11).

Bounty on sugar—payment of balance of claims, etc.

An act to provide revenue for the Government and to encourage the industries of the United States, approved July 24, 1897 (30 Stat., 151).

The "**DINGLEY BILL**." Amended sections 3341 and 3394, Revised Statutes.

An act to provide ways and means to meet war expenditures, and for other purposes, approved June 13, 1898 (30 Stat., 448).

War-revenue act. Additional special taxes imposed; increased tax on fermented liquors, tobacco, and cigars; imposed legacy taxes; tax on mixed flour, stamp taxes on instruments, etc.

An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1898, and for prior years, and for other purposes, approved July 7, 1898 (30 Stat., 652).

Relative to payment of gaugers of fruit brandy—additional temporary force in Internal-Revenue Service.

An act to amend section 3287 of the Revised Statutes of the United States, concerning the drawing off, gauging, marking, and removal of spirits, approved February 21, 1899 (30 Stat., 843).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1900, and for other years, approved February 24, 1899 (30 Stat., 864).

Term of temporary service of additional clerks extended one year.

(**PUBLIC RESOLUTION—No. 22.**) Joint resolution to amend section 25 of the act passed June 13, 1898, entitled “An act to provide ways and means to meet war expenditures, and for other purposes,” approved February 28, 1899 (30 Stat., 1390).

Bonds secured by mortgages, but one stamp required, etc.

An act to amend the internal-revenue laws relating to distilled spirits, and for other purposes, approved March 3, 1899 (30 Stat., 1349).

Allowance on loss in warehouse.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, and for other years, approved March 3, 1899 (30 Stat., 1091).

Fifty-sixth Congress.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1901, and for other purposes, approved April 17, 1900 (31 Stat., 86).

An act to provide a government for the Territory of Hawaii, approved April 30, 1900 (31 Stat., 141). Takes effect forty-five days from and after the date of approval, that is, on June 14, 1900.

An act authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal-revenue stamps, approved May 12, 1900 (31 Stat., 177).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1901, and for other purposes, approved June 6, 1900 (31 Stat., 588).

An act to amend section 3255 of the Revised Statutes of the United States concerning the *distilling of brandy from fruits*, approved February 4, 1901 (31 Stat., 759).

An act to amend an act entitled “An act to provide ways and means to meet war expenditures, and for other purposes,” approved June 13, 1898, and to reduce taxation thereunder, approved March 2, 1901 (31 Stat., 938).

Revenue reduction act. Repealed certain war revenue taxes after July 1, 1901.

ACTS SINCE SUPPLEMENT REVISED STATUTES, VOL. 2. PART 9.

Fifty-seventh Congress.

Joint resolution authorizing the Commissioner of Internal Revenue to return bank checks, drafts, certificates of deposit, and orders for the payment of money, having imprinted stamp thereon, to the owners thereof, and for other purposes, approved February 26, 1902 (32 Stat., 736).

An act temporarily to provide revenue for the Philippine Islands, and for other purposes, approved March 8, 1902 (32 Stat., 54).

An act to repeal war-revenue taxation, and for other purposes, approved April 12, 1902; taking effect July 1, 1902 (32 Stat., 96).

An act to make oleomargarine and other imitation dairy products subject to the laws of any State or Territory or the District of Columbia into which they are transported, and to change the tax on oleomargarine, and to impose a tax, provide for the inspection, and to regulate the manufacture and sale of certain dairy products, and to amend an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886. Approved May 9, 1902; taking effect July 1, 1902 (32 Stat., 193).

New rate of tax on oleomargarine.

An act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, etc., under the act of June 13, 1898, and for other purposes, approved June 27, 1902 (32 Stat., 406).

An act to amend the internal-revenue laws in regard to *storkeepers and gaugers*, approved June 28, 1902 (32 Stat., 492).

An act to amend the act of May 12, 1900, authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal-revenue stamps, approved June 30, 1902 (32 Stat., 506).

An act to amend sections 3362 and 3394 of the Revised Statutes of the United States, *relating to tobacco*, approved July 1, 1902 (32 Stat., 714).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1903, and for other purposes, approved April 28, 1902 (32 Stat., 120).

Temporary clerks transferred to the classified service.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1903, and for other purposes, approved June 28, 1902 (32 Stat., 419).

An act to amend the internal-revenue laws, approved January 13, 1903 (32 Stat., 770).

Outage bill.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1904, and for other purposes, approved February 25, 1903 (32 Stat., 877).

Twenty additional revenue agents provided for in lieu of those provided for by sections 3 and 47 of the act of June 13, 1898.

An act making appropriation to supply deficiencies for the year ending June 30, 1903, and prior years, approved March 3, 1903 (32 Stat., 1040).

Relative to claims for rebate on packages of tobacco and snuff.

Fifty-eighth Congress.

An act to relieve obligors on bonds given to the United States upon the exportation to the Philippine Islands prior to November 20, 1901, of articles subject to internal-revenue tax, approved April 28, 1904 (33 Stat., 574).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1906, and for other purposes, approved February 3, 1905 (33 Stat., 631, 652).

Fifty-ninth Congress.

An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1906, and for prior years and for other purposes, approved February 27, 1906 (34 Stat., 49).

Expenditures in excess of appropriations forbidden.

An act for the withdrawal from bond, tax free, of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing materials, approved June 7, 1906; taking effect January 1, 1907 (34 Stat., 217).

Denatured alcohol act.

An act to amend existing laws relating to the *fortification of pure sweet wines*, approved June 7, 1906 (34 Stat., 215).

An act to amend the internal-revenue laws so as to provide for furnishing certified copies of certain records, approved June 21, 1906 (34 Stat., 387).

An act to provide means for the sale of internal-revenue stamps in the island of Porto Rico, approved June 29, 1906 (34 Stat., 620).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1907, and for other purposes, approved June 22, 1906 (34 Stat., 389).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1907, and for other purposes, approved June 30, 1906 (34 Stat., 697).

Fifty-ninth Congress.

An act to amend an act entitled "An act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing materials," approved June 7, 1906. Approved March 2, 1907 (34 Stat., 1250).

An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1907, and for prior years, and for other purposes, approved March 4, 1907, 11 a. m. (34 Stat., 1373).

Sixtieth Congress.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, approved May 22, 1908 (35 Stat., 184).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, approved May 27, 1908 (35 Stat., 317).

An act to provide for refunding stamp taxes paid under the act of June 13, 1898, upon foreign bills of exchange, etc., approved February 1, 1909 (35 Stat., 590).

An act to impose a tax upon *alcoholic compounds coming from Porto Rico*, and for other purposes, approved February 4, 1909 (35 Stat., 594).

An act making appropriations for the legislative, executive, and judicial expenses for the fiscal year ending June 30, 1910, and for other purposes, approved March 4, 1909 (35 Stat., 845).

Sixty-first Congress.

An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, approved August 5, 1909 (36 Stat., 11).

Payne-Aldrich bill. *Excise Tax on Corporations.*

An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1909, and for other purposes, approved August 5, 1909 (36 Stat., 118).

An act to amend section 63 of the act of August 28, 1894 (28 Stat., 567), approved May 13, 1910 (36 Stat., 369).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1911, and for other purposes. Approved, June 17, 1910 (36 Stat., 468).

An act to amend paragraph 2 of section 3264, Revised Statutes of the United States, as amended by section 5 of the act of March 1, 1879, and section 3285, Revised Statutes of the United States, as amended by section 3 of the act of May 28, 1880, approved June 22, 1910 (36 Stat., 590).

An act granting cumulative annual leave of absence to storekeepers, gaugers, and storekeeper-gaugers, with pay, approved June 23, 1910 (36 Stat., 592).

An act making appropriations to supply deficiencies in appropriations for the fiscal year 1910, and for other purposes, approved June 25, 1910 (36 Stat., 774, 780).

Additional force authorized to carry into effect provisions of the corporation tax act.

An act to amend the provisions of the act of March 3, 1885, limiting the compensation of storekeepers, gaugers, and storekeeper-gaugers in certain cases to \$2 a day, and for other purposes, approved, February 24, 1911 (36 Stat., 928).

An act to amend the internal-revenue laws relating to distilled spirits, and for other purposes, approved, March 2, 1911 (36 Stat., 1014).

An act to amend section 3287 of the Revised Statutes of the United States as amended by section 6 of chapter 108 of an act approved May 28, 1880, page 145, volume 21, United States Statutes at Large, approved March 2, 1911 (36 Stat., 1014). Amends section 3255 Revised, Statutes.

An act to authorize the receipt of certified checks drawn on national and State banks for duties on imports and internal taxes, and for other purposes, approved March 2, 1911 (36 Stat., 965).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1912, and for other purposes, approved March 4, 1911 (36 Stat., 1170).

PROVISIONS RELATIVE TO ACTS OF REPEAL.

SEC. 12, R. S. Whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided.

SEC. 13, R. S. The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

This provision (sec. 13 R. S.), has been upheld by the courts as a rule of construction applicable, when not otherwise provided, as a general saving clause to be read and construed as a part of all subsequent repealing statutes, in order to give effect to the will and intent of Congress. (*Hertz v. Woodman*, 218 U. S., 205 (T. D. 1636), quoting *United States v. Reisinger*, 128 U. S., 398; *Great Northern Ry. Co. v. United States*, 208 U. S., 452).

SEC. 72, act August 28, 1894 (28 Stat., 509), repealing and saving clause.

SEC. 41, act of August 5, 1909 (36 Stat., 90), repealing and saving clause.

Repeals by implication are not favored, particularly in revenue laws, and will only be held to exist when the repugnance is positive, and then only to the extent of the repugnance. (*United States v. 100 Barrels Spirits*, 12 Int. Rev. Rec., 153.)

Nothing is better settled than that repeals, and the same may be said of annulments, by implication, are not favored by the courts, and that no statute will be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction. (*Cope v. Cope*, 137 U. S., 682, and cases cited.)

A later statute covering the whole subject-matter of a former one where the objects of the two statutes are the same operates as a repeal. (*United States v. Claffin*, 97 U. S., 546. See also *United States v. Tynen*, 11 Wall., 88.)

When a later statute is a complete revision of the subject to which the earlier statute related and the new legislation was manifestly intended as a substitute for the former legislation, the prior act must be held to have been repealed. (*United States v. Ranlett and Stone* (1898, 172 U. S., 133.)

SCHEDULE OF ARTICLES AND OCCUPATIONS SUBJECT TO TAX.

TAXES PAYABLE BY STAMP.

SPECIAL TAXES.

	Rate of tax.
Rectifiers of less than 500 barrels a year.....	\$100.00
Rectifiers of 500 barrels or more a year.....	200.00
Wholesale liquor dealers.....	100.00
Retail liquor dealers.....	25.00
Wholesale dealers in malt liquors.....	50.00
Retail dealers in malt liquors.....	20.00
Manufacturers of stills.....	50.00
And for stills or worms manufactured, each.....	20.00
Brewers:	
Annual manufacture less than 500 barrels.....	50.00
Annual manufacture 500 barrels or more.....	100.00
Manufacturers of filled cheese.....	400.00
Wholesale dealers in filled cheese.....	250.00
Retail dealers in filled cheese.....	12.00
Manufacturers of oleomargarine.....	600.00
Wholesale dealers in oleomargarine artificially colored in imitation of butter.....	480.00
Wholesale dealers in oleomargarine free from artificial coloration.....	200.00
Retail dealers in oleomargarine artificially colored in imitation of butter.....	48.00
Retail dealers in oleomargarine free from artificial coloration.....	6.00
Manufacturers of adulterated butter.....	600.00
Wholesale dealers in adulterated butter.....	480.00
Retail dealers in adulterated butter.....	48.00
Manufacturers of process or renovated butter.....	50.00
Manufacturers, packers, or repackers of mixed flour.....	12.00

TOBACCO AND SNUFF.

	Rate of tax, after July 1, 1910.
Tobacco, however prepared, manufactured and sold, or removed for consumption or sale, per pound.....	\$0.08
Snuff, however prepared, manufactured and sold, or removed for consumption or sale, per pound.....	.08

CIGARS AND CIGARETTES.

	Rate of tax per thousand after July 1, 1910.
Cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than 3 pounds per thousand.....	\$3.00
Cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than 3 pounds per thousand.....	.75
Cigarettes weighing not more than 3 pounds per thousand.....	1.25
Cigarettes weighing more than 3 pounds per thousand.....	3.60

DISTILLED SPIRITS, ETC.

	Rate of tax.
Distilled spirits, per gallon.....	\$1.10
Stamps for distilled spirits intended for export, each.....	.10
Except when affixed to packages containing two or more 5-gallon cans for export.....	.05

	Rate of tax.
Case stamps for spirits bottled in bond.....	\$0.10
Wines, liquors, or compounds known or denominated as wine, and made in imitation of sparkling wine or champagne, but not made from grapes grown in the United States, and liquors not made from grapes, currants, rhubarb, or berries grown in the United States, but produced by being rectified or mixed with distilled spirits or by the infusion of any matter in spirits, to be sold as wine, or as a substitute for wine, in bottles containing not more than 1 pint, per bottle or package.....	.10
Same, in bottles containing more than 1 pint, and not more than 1 quart, per bottle or package.....	.20
(And at the same rate for any larger quantity of such merchandise, however put up or whatever may be the package.)	

FERMENTED LIQUORS.

Fermented liquors per barrel, containing not more than 31 gallons.....	1.00
(And at a proportionate rate for halves, thirds, quarters, sixths, and eighths of barrels.)	
More than 1 barrel of 31 gallons, and not more than 63 gallons, in 1 package.....	2.00

OLEOMARGARINE.

Oleomargarine, domestic, artificially colored to look like butter, of any shade of yellow, per pound.....	.10
Oleomargarine, free from coloration that causes it to look like butter, of any shade of yellow, per pound.....	.00 $\frac{1}{4}$
Oleomargarine, imported from foreign countries, per pound.....	.15

ADULTERATED BUTTER AND PROCESS OR RENOVATED BUTTER.

Adulterated butter, per pound.....	.10
Process or renovated butter, per pound.....	.00 $\frac{1}{4}$

FILLED CHEESE.

Filled cheese, per pound.....	.01
Same, imported, per pound.....	.08

OPIUM.

Prepared smoking opium, per pound.....	10.00
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PLAYING CARDS.

Playing cards, per pack, containing not more than 54 cards.....	.02
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MIXED FLOUR.

Mixed flour, per barrel of 196 pounds, or more than 98 pounds.....	.04
Half barrel of 98 pounds, or more than 49 pounds.....	.02
Quarter barrel of 49 pounds, or more than 24 $\frac{1}{2}$ pounds.....	.01
Eighth barrel of 24 $\frac{1}{2}$ pounds or less.....	.00 $\frac{1}{2}$
(Mixed flour imported from foreign countries, in addition to import duties, must pay internal-revenue tax as above.)	

TAXES NOT PAYABLE BY STAMP.

- Excise tax on corporations payable on or before June 30)..... 1 per cent on net income in excess of \$5,000.
- Circulation issued by any bank, etc., or person (except a national bank taxed under section 5214, Revised Statutes, and section 13, act March 11, 1900, . per month..... $\frac{1}{2}$ of 1 p. c.
- Circulation (except national banks) exceeding 90 per cent of capital, in addition, per month..... $\frac{1}{2}$ of 1 p. c.

	Rate of tax.
4. Banks, etc., on amount of notes of any person, State bank; or State banking association, used for circulation and paid out	10 per cent
5. Banks, etc., bankers, or associations, on amount of notes of any town, city, or municipal corporation paid out by them	10 per cent
6. Every person, firm, association, other than national banking associations, and every corporation, State bank, or State banking association, on the amount of <i>their own notes</i> used for circulation and paid out by them.....	10 per cent
7. Every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, on the amount of notes of any person, firm, association, other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them.....	10 per cent
8. On deficiencies in production of spirits.	
9. On spirits which excess of materials used should produce under survey.	
10. On spirits produced and not accounted for.	
11. Grape brandy used in the fortification of pure sweet wine under an act approved June 7, 1906 (to be assessed), per gallon	\$0.03
12. Taxes payable by stamps not paid at the time and in the manner required by law.	

FEES AND PENALTIES.

13. Fees of \$1 for 100 words or fraction thereof authorized by law to be charged by collectors for furnishing certified copies of lists of special taxpayers upon application of prosecuting officers of any State, county, or municipality.
14. Penalties of 50 per cent and 100 per cent incurred by taxpayers for failure to make certain returns showing liability, or for making false returns, respectively.
15. Penalty of 5 per cent for failure of taxpayers to pay assessed taxes within the time limited by law.

Table of special taxes imposed.

Designation by article manufactured or sold, etc.	Manufac- turers.	Wholesale dealers.	Retail dealers.	Miscellane- ous.
Brewers of less than 500 barrels.....				\$50
Brewers of 500 barrels or more.....				100
Butter, adulterated.....	\$600	\$480	\$18	
Butter, process or renovated.....	50			
Filled cheese.....	400	250	12	
Liquor.....		100	25	
Malt liquor.....		50	20	
Mixed flour, making, packing, or repacking.....	12			
Oleomargarine.....	600	480	48	
Oleomargarine, not artificially colored.....	600	200	6	
Rectifiers of less than 500 barrels.....				100
Rectifiers of 500 barrels or more.....				200
Stills.....	50			
For each still manufactured.....				20
For each worm manufactured.....				20

Table of special taxes and 50 per cent penalties.

Commencing business in	No. of months liable.	Tax or penalty.	Annual rate in dollars and cents.						
			\$20.	\$25.	\$50.	\$100.	\$200.	\$250.	\$400.
June.....	1	Tax.....	\$1.67	\$2.09	\$4.17	\$8.34	\$16.67	\$20.84	\$33.34
		\Penalty.....	.83	1.04	2.08	4.17	8.33	10.42	16.67
May.....	2	Tax.....	3.34	4.17	8.34	16.67	33.34	41.67	66.67
		\Penalty.....	1.67	2.08	4.17	8.33	16.67	20.83	33.33
April.....	3	Tax.....	5.00	6.25	12.50	25.00	50.00	62.50	100.00
		\Penalty.....	2.50	3.13	6.25	12.50	25.00	31.25	50.00
March.....	4	Tax.....	6.67	8.34	16.67	33.34	66.67	83.34	133.34
		\Penalty.....	3.33	4.17	8.33	16.67	33.33	41.67	66.67
February.....	5	Tax.....	8.34	10.42	20.84	41.67	83.34	101.17	166.67
		\Penalty.....	4.17	5.21	10.42	20.83	41.67	52.08	83.33
January.....	6	Tax.....	10.00	12.50	25.00	50.00	100.00	125.00	200.00
		\Penalty.....	5.00	6.25	12.50	25.00	50.00	62.50	100.00
December.....	7	Tax.....	11.67	14.59	29.17	58.34	116.67	145.84	233.34
		\Penalty.....	5.83	7.29	14.58	29.17	58.33	72.92	116.67
November.....	8	Tax.....	13.34	16.67	33.34	66.67	133.34	166.67	266.67
		\Penalty.....	6.67	8.33	16.67	33.33	66.67	83.33	133.33
October.....	9	Tax.....	15.00	18.75	37.50	75.00	150.00	187.50	300.00
		\Penalty.....	7.50	9.38	18.75	37.50	75.00	93.75	150.00
September.....	10	Tax.....	16.67	20.84	41.67	83.34	166.67	208.34	333.34
		\Penalty.....	8.33	10.42	20.83	41.67	83.33	104.17	166.67
August.....	11	Tax.....	18.34	22.92	45.84	91.67	183.34	229.17	366.67
		\Penalty.....	9.17	11.46	22.92	45.83	91.67	114.58	183.33
July.....	12	Tax.....	20.00	25.00	50.00	100.00	200.00	250.00	400.00
		\Penalty.....	10.00	12.50	25.00	50.00	100.00	125.00	200.00

Regulations No. 1 revised, August 15, 1907, p. 102.

INTERNAL-REVENUE COLLECTION DISTRICTS IN THE UNITED STATES, WITH LOCATION OF COLLECTORS' OFFICES.

Alabama.—Collector's office, Birmingham.

Alaska.—See collector, Tacoma, Wash.

Arizona.—Consolidated with New Mexico. Collector's office, Santa Fe, N. Mex.

Arkansas.—Collector's office, Little Rock.

California.—First district, collector's office, San Francisco; fourth district, collector's office, Sacramento; sixth district, collector's office, Los Angeles.

Colorado.—Collector's office, Denver.

Connecticut.—Collector's office, Hartford.

Dakota (North and South).—Collector's office, Aberdeen, S. Dak.

Delaware.—Consolidated with Maryland. Collector's office, Baltimore, Md.

District of Columbia.—Consolidated with Maryland. Collector's office, Baltimore, Md.

Florida.—Collector's office, Jacksonville.

Georgia.—Collector's office, Atlanta.

Hawaii.—Collector's office, Honolulu.

Idaho.—Consolidated with Montana. Collector's office, Salt Lake City, Utah.

Illinois.—First district, collector's office, Chicago; fifth district, collector's office, Peoria; eighth district, collector's office, Springfield; thirteenth district, collector's office, East St. Louis.

Indiana.—Sixth district, collector's office, Indianapolis; seventh district, collector's office, Terre Haute.

Iowa.—Third district, collector's office, Dubuque; fourth district, collector's office, Burlington.

Kansas.—Collector's office, Leavenworth.

Kentucky.—Second district, collector's office, Owensboro; fifth district, collector's office, Louisville; sixth district, collector's office, Covington; seventh district, collector's office, Lexington; eighth district, collector's office, Danville.

Louisiana.—Collector's office, New Orleans.

Maine.—Consolidated with New Hampshire. Collector's office, Portsmouth, N. H.

Maryland.—Collector's office, Baltimore.

Massachusetts.—Collector's office, Boston.

Michigan.—First district, collector's office, Detroit; fourth district, collector's office, Grand Rapids.

Minnesota.—Collector's office, St. Paul.

Mississippi.—Consolidated with Alabama. Collector's office, Birmingham, Ala.

Missouri.—First district, collector's office, St. Louis; sixth district, collector's office, Kansas City.

Montana.—Collector's office, Salt Lake City, Utah.

Nebraska.—Collector's office, Omaha.

Nevada.—Consolidated with fourth district of California. Collector's office, Sacramento, Cal.

New Hampshire.—Collector's office, Portsmouth.

New Jersey.—First district, collector's office, Camden; fifth district, collector's office, Newark.

New Mexico.—Collector's office, Santa Fe.

New York.—First district, collector's office, Brooklyn; second district, collector's office, New York; third district, collector's office, New York; fourteenth district, collector's office, Albany; twenty-first district, collector's office, Syracuse; twenty-eighth district, collector's office, Rochester.

North Carolina.—Fourth district, collector's office, Raleigh; fifth district, collector's office, Statesville.

Ohio.—First district, collector's office, Cincinnati; tenth district, collector's office, Toledo; eleventh district, collector's office, Columbus; eighteenth district, collector's office, Cleveland.

Oklahoma.—Collector's office, Oklahoma City.

Oregon.—Collector's office, Portland.

Pennsylvania.—First district, collector's office, Philadelphia; ninth district, collector's office, Lancaster; twelfth district, collector's office, Scranton; twenty-third district, collector's office, Pittsburg.

Rhode Island.—Consolidated with Connecticut. Collector's office, Hartford, Conn.

South Carolina.—Collector's office, Columbia.

Tennessee.—Consolidated November 25, 1907. Collector's office, Nashville.

Texas.—Third district, collector's office, Austin; fourth district, collector's office, Dallas.

Utah.—Consolidated with Montana. Collector's office, Salt Lake City, Utah.

Vermont.—Consolidated with New Hampshire. Collector's office, Portsmouth, N. H.

Virginia.—Second district, collector's office, Richmond; sixth district, collector's office, Abingdon.

Washington.—Collector's office, Tacoma.

West Virginia.—Collector's office, Parkersburg.

Wisconsin.—First district, collector's office, Milwaukee; second district, collector's office, Madison.

Wyoming.—Consolidated with Colorado. Collector's office, Denver, Colo.

LIST OF INTERNAL-REVENUE REGULATIONS.

Regulations.	Subject.
No. 1.....	Concerning assessments.
No. 1, sup. No. 1.....	Concerning the transfer of special-tax stamps (Treasury Decision 1637).
No. 2, revised.....	Instructions to officers concerning their accounts.
No. 3, revised	Concerning tax on legacies and distributive shares.
No. 3, revised sup. No. 1.	Opinions of the U. S. Supreme Court in legacy tax cases. (Treasury Decision 129.)
No. 5, revised.....	Concerning special bonded warehouses for storage of fruit brandy made from apples, peaches, or grapes, exclusively.
No. 6, revised.....	Relative to tax on fermented liquors.
No. 7, revised.....	Relative to tax on distilled spirits.
No. 7, revised, extracts from.	Relative to the distillation of brandy made exclusively from apples, peaches, grapes, pears, pineapples, apricots, berries, prunes, figs, or cherries, exclusively.
No. 8, revised.....	Relating to taxes on tobacco, snuff, and cigars.
No. 9, revised.....	Regulations concerning oleomargarine, adulterated and renovated butter.
No. 11, revised.....	Gauger's manual.
No. 11, revised sup. No. 1.	Gauger's weighing manual.
No. 12, revised.....	Relating to revenue officers, district attorneys, marshals, etc.
No. 14.....	Relating to the abatement and refunding of taxes.
No. 16.....	Concerning the tax on opium manufactured in the United States for smoking purposes.
No. 19, revised sup. No. 1.	Relative to the exportation of playing cards by parcels post. Superseded by Treasury decision 1668.
No. 20.....	Relative to the establishment of general bonded warehouses for the storage of spirits made from material other than fruit.
No. 20, sup. No. 1.....	Relative to the bonding of distilled spirits in general bonded warehouses.
No. 22.....	Relative to filled cheese.
No. 23.....	Relative to the bottling of distilled spirits in bond, under act of March 3, 1897.
No. 25.....	Relative to the tax on mixed flour.
No. 26.....	Concerning documentary and proprietary stamps. (Obsolete.)
No. 27.....	Redemption of stamps.
No. 27, sup. No. 1.....	Same.
No. 28.....	Withdrawal of wine spirits or grape brandy from distilleries and special bonded warehouses free of tax for the fortification of pure sweet wine. (Regulations as to fortification of wine for export. Treasury Decision 1663.)
No. 29.....	Exportation free of tax or with benefit of drawback, of articles subject to internal-revenue tax.
No. 30.....	Relative to denatured alcohol, central denaturing bonded warehouses and industrial distilleries.
No. 30, sup. No. 1.....	Relative to manufacture, sale, and use of denatured alcohol.
No. 31.....	Relative to excise tax on corporations, etc.

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INTERNAL-REVENUE LAWS.

OFFICE OF INTERNAL REVENUE, ORGANIZATION, APPROPRIATIONS, ETC.

[The sections enumerated in this compilation are from the Revised Statutes of the United States, unless otherwise indicated.]

Sec.	| Sec.
319. Commissioner of Internal Revenue.	Appropriation acts. Officers and em-
321. Duties of commissioner.	ployees. Reports.
3671. Estimates of expenses of collecting internal revenue.	239. Accounts of receipts of internal revenue, how kept.
Estimates and statement of receipts and expenditures.	261. Report to Congress by Secretary of moneys received.
322. Deputy commissioner.	196. Annual report of head of department.
323. Duties of deputy commissioner.	
349. Solicitor of Internal Revenue.	
320. Chief clerk.	
173-174. Duties of chief clerk.	

SEC. 319. There shall be in the Department of the ^{Commissioner of Internal Revenue.} Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of six thousand dollars a year.

12 Op. Atty. Gen., 443; 8 Int. Rev. Rec., 54.

SEC. 321. The Commissioner of Internal Revenue, under ^{Duties of Commissioner of Internal Revenue.} the direction of the Secretary of the Treasury, shall have general superintendence of the assessment and collection of all duties and taxes now or hereafter imposed by any law providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue; and shall provide hydrometers, and proper and sufficient adhesive stamps and stamps or dies for expressing and denoting the several stamp duties, or, in the case of percentage duties, the amount thereof; and alter and renew or replace such stamps from time to time, as occasion may require. He may also contract for or procure the printing of requisite forms, decisions, and regulations, but the printing of such forms, decisions, and regulations shall be done at the Public Printing Office, unless the Public Printer shall be unable to perform the work: *Provided*, That the Commissioner of Internal Revenue may, under such regulations as may be established by the Secretary of the Treasury, after due public notice, receive bids and make contracts for supplying stationery, blank-books, and blanks to the

collectors in the several collection-districts; and the said Commissioner shall estimate in detail by collection-districts the expense of assessing and the expense of the collection of internal revenue.

See, as to stamps, sections 3238, 3312, 3328, 3341, 3369, 3395, 3445, 3446, and other sections.

Commissioner to make assessments (secs. 3176, 3182, 3253, 3309, 3314, 3371, 3437; sec. 3413, amended by secs. 19, 20, and 21, act of Feb. 8, 1875; act of May 13, 1876; sec. 8, act of Mar. 3, 1877; sec. 6, act of Mar. 1, 1879, fruit brandy; sec. 8, act of May 28, 1880, amending sec. 6, act of Mar. 1, 1879; sec. 9, act of Aug. 2, 1886, oleomargarine; sec. 28, act of Oct. 1, 1890, opium; sec. 27, act of Aug. 28, 1894, playing cards; sec. 10, act of June 6, 1896, filled cheese; sec. 41, act of June 13, 1898, mixed flour; sec. 38, act of Aug. 5, 1909, corporations).

It is the duty of the commissioner to see that the laws relating to collection of internal revenue taxes are faithfully executed. He has the right to order seizures. (*Agnew v. Haymes*, 141 Fed. Rep., 631; T. D. 955.)

Commissioner to make regulations to carry out the law or made necessary by reason of changes in the law (sec. 3447, p. 355). See also under the different subjects.

Distinction between "instructions" and "regulations." (*Landram v. United States*, 16 Ct. Cls., 74; 27 Int. Rev. Rec., 80.)

A regulation made in pursuance of an act of Congress has the force of law. (*United States v. Eliason*, 16 Pet., 291; *ex parte Reed*, 100 U. S., 13; *United States v. Barrows et al.*, 10 Int. Rev. Rec., 86; *Harvey v. United States*, 3 Ct. Cls., 38; *Stotesbury v. United States*, 23 Ct. Cls., 292; 22 Op. Atty. Gen., 570.)

Scope and effect of regulations of the department. (In re *Kollock*, 165 U. S., 526; 43 Int. Rev. Rec., 170; *United States v. Symonds*, 120 U. S., 46; *Wilkins v. United States*, U. S. Circuit Court of Appeals, 1899, 96 Fed. Rep., 837; T. D. 21623; *Sprinkle v. United States*, 141 Fed. Rep., 811; T. D. 958; *Stegall v. Thurman*, 175 Fed. Rep., 813; T. D. 1616.)

Secretary of Treasury can not make regulations which will defeat the law. (*Campbell v. United States*, 107 U. S., 410.)

Regulations made by the commissioner pursuant to the statutory authority, with the approval of the Secretary of the Treasury, in respect to the assessment and collection of internal revenue, have the force of statutes; and the acts of the commissioner are presumed to be the acts of the Secretary. (In re *Huttman*, 70 Fed. Rep., 699.)

In *United States v. Eaton* (144 U. S., 677) it was held that "a sufficient statutory authority should exist for declaring any act of omission a criminal offense." Regulations prescribed by law may have in a proper sense the force of law, but when the statute does not distinctly make the neglect to do the thing required a criminal offense a regulation can not have that effect.

Regulations can not change the positive provisions of law. (*United States v. Two Hundred Barrels of Whisky*, 95 U. S., 571; 24 Int. Rev. Rec., 3; *Morrill v. Jones*, 106 U. S., 467; *United States v. Three Barrels*, 77 Fed. Rep., 963.)

Federal courts will take judicial notice of regulations prescribed in pursuance of law. (*Caha v. United States*, 152 U. S., 211; *Wilkins v. United States*, 96 Fed. Rep., 837; T. D. 21623, 1880; *Dominici v. United States*, 72 Fed. Rep., 46.)

While a regulation may have the force of law, printed headings on a form, additional to the expressed terms of the regulation do not have the force of law. (*United States v. Lamson*, 162 Fed. Rep., 168.)

A regulation promulgated by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, prohibiting collectors from producing the records of their offices or furnishing copies thereof for the use of third persons or for use

as evidence in behalf of litigants in any court, is a valid and binding regulation. (In re Comingore, Collector, 1889, 96 Fed. Rep., 552; T. D. 21584; Boske v. Comingore, 177 U. S., 459; T. D. 104.)

By section 161, Revised Statutes, the head of each department is authorized to prescribe regulations as to the custody, use, and preservation of the records and papers appertaining to it and may decline to furnish copies. (25 Op. Atty. Gen., 326; see sec. 892 and notes, p. 391, Appendix.)

The office of the Commissioner General of Immigration was transferred to the new Department of Commerce and Labor by the act of February 14, 1903, and section 7 of the act provided as follows in regard to Chinese exclusion:

"And the authority, power, and jurisdiction in relation thereto now vested by law or treaty in the collectors of customs and the collectors of internal revenue are hereby conferred upon and vested in such officers under the control of the Commissioner General of Immigration, as the Secretary of Commerce and Labor may designate therefor." (T. D. 658.)

SEC. 3671. The Commissioner of Internal Revenue shall estimate in detail, by collection-districts, the expense of assessing and the expense of the collection of internal revenue, and submit the same to Congress at the commencement of each regular session. Estimates of expenses of collecting internal revenue.

Statements to Congress as to expenditure of fraud fund and miscellaneous expenditures, see section [3463a], p. 366.

SEC. 5. [*Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1902, approved Mar. 3, 1901 (31 Stat., 982, 1009).]*] That hereafter it shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the fifteenth day of October of each year, their annual estimates for the public service, to be included in the Book of Estimates prepared by law under his direction, * * *

Estimates.

[*Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1907, approved June 22, 1906 (34 Stat., 448).]*

SEC. 4.

Hereafter the heads of the several Executive Departments and all other officers authorized or required to make estimates for the public service shall include in their annual estimates furnished the Secretary of the Treasury for inclusion in the Book of Estimates all estimates of appropriations required for the service of the fiscal year for which they are prepared and submitted, and special or additional estimates for that fiscal year shall only be submitted to carry out laws subsequently enacted, or when deemed imperatively necessary for the public service by the Department in which they shall originate, in which case such special or additional estimate shall be accompanied by a full statement of its imperative necessity, and reasons for its omission in the annual estimates.

[*Extract from the legislative, executive and judicial appropriation act of Feb. 26, 1907 (34 Stat., 949).]*

The Secretary of the Treasury shall each year prepare and submit in his annual report to Congress estimates of the public revenue and the public expenditures for the fiscal year current, and also for the fiscal year next ensuing at the time said report is submitted, together with a statement of the receipts and expenditures of the Government for the preceding completed fiscal year.

[Extract from the sundry civil appropriation act for 1910. Act of March 4, 1909. (35 Stat., 1027).]

SEC. 7. Immediately upon the receipt of the regular annual estimates of appropriations needed for the various branches of the Government it shall be the duty of the Secretary of the Treasury to estimate as nearly as may be the revenues of the Government for the ensuing fiscal year, and if the estimate for appropriations, including the estimated amount necessary to meet all continuing and permanent appropriations, shall exceed the estimated revenues the Secretary of the Treasury shall transmit the estimates to Congress as heretofore required by law and at once transmit a detailed statement of all of said estimates to the President, to the end that he may, in giving Congress information of the state of the Union and in recommending to their consideration such measures as he may judge necessary, advise the Congress how in his judgment the estimated appropriations could with least injury to the public service be reduced so as to bring the appropriations within the estimated revenues, or, if such reduction be not in his judgment practicable without undue injury to the public service, that he may recommend to Congress such loans or new taxes as may be necessary to cover the deficiency.

Deputy Commissioner of Internal Revenue.

SEC. 322. There shall be in the office of the Commissioner of Internal Revenue a Deputy Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of three thousand five hundred dollars a year.

By act approved January 29, 1874 (18 Stat., 6), it is provided that this "Office of Deputy Commissioner of Internal Revenue * * * be, and the same is hereby, abolished; and that the Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, designate one of the two remaining deputy commissioners as first deputy commissioner, who shall perform the duties and be paid only the salary prescribed for the office of deputy commissioner hereby abolished."

The legislative, executive, and judicial appropriation act of April 17, 1900 (31 Stat., 103), made appropriation for a deputy commissioner at \$4,000 and provided for an additional deputy at \$3,600.

See section 235, Revised Statutes, and Supplement to Revised Statutes, volume 1, page 3.

(13 Op. Atty. Gen., 512; 15 Op. Atty. Gen., 6.)

Duties of Deputy Commissioner of Internal Revenue.

SEC. 323. The Deputy Commissioner of Internal Revenue shall be charged with such duties in the office of the Commissioner of Internal Revenue as may be prescribed by the Secretary of the Treasury, or by law, and shall act as Commissioner of Internal Revenue in case of the absence of that officer.

Vacancies occurring by death, resignation, absence, or sickness of chief of a bureau, how temporarily filled (secs. 178, 179, 180, R. S.).

Solicitor of Internal Revenue.

SEC. 349. There shall be in the Department of Justice * * * a Solicitor of Internal Revenue, * * * who shall be appointed by the President, by and with the advice and consent of the Senate. * * *

The salary of the Solicitor of Internal Revenue, as appropriated by the last appropriation act, is \$5,000.

A Solicitor of Internal Revenue was added to the Internal Revenue Office corps by the act of July 13, 1866 (14 Stat., 170), but by the act of June 22, 1870 (16 Stat., 162), organizing the Department of Justice, the Solicitor was formally transferred to

that department. He is the law officer and law adviser of the Commissioner. The only duties of which mention is made by law are in connection with compromise cases (sec. 3229, p. 123).

SEC. 320. The Commissioner of Internal Revenue is authorized to designate one of the heads of division as chief clerk of the Bureau without additional compensation.

Chief clerk.

SEC. 173. Each chief clerk in the several Departments and Bureaus, and other offices connected with the Departments, shall supervise, under the direction of his immediate superior, the duties of the other clerks therein, and see that they are faithfully performed.

Chief clerk to supervise duties of other clerks.

SEC. 174. Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case. He shall revise such distribution from time to time for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business.

Chief clerk to distribute duties.

Section 175 directs what action the chief of a bureau or other superior officer shall take upon receiving the monthly report of his chief clerk, rendered pursuant to section 174.

Section 166, Revised Statutes, as amended by act of May 28, 1896 (29 Stat., 140), provides in regard to distribution of clerks and details.

Appropriation for Office Force.

[Extracts from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1912, approved March 4, 1911 (36 Stat. 1170, 1193).]

* * * * *

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE: Office force and salaries.
Commissioner of Internal Revenue, six thousand dollars; deputy commissioner, four thousand dollars; deputy commissioner, three thousand six hundred dollars; chemist, two thousand five hundred dollars; first assistant chemist, one thousand eight hundred dollars; second assistant chemist, one thousand six hundred dollars; third assistant chemist, one thousand four hundred dollars; three heads of divisions, at two thousand five hundred dollars each; six heads of divisions, at two thousand two hundred and fifty dollars each; superintendent of stamp vault, two thousand dollars; two clerks at two thousand dollars each; private secretary, one thousand eight hundred dollars; twenty-eight clerks of class four; twenty-four clerks of class three; thirty-seven clerks of class two; thirty-seven clerks of class one; thirty-two clerks, at one thousand dollars each; forty-two clerks, at nine hundred dollars each; three messengers; twenty-one assistant messengers; and sixteen laborers; in all, three hundred and thirty-two thousand seven hundred dollars.

For the following formerly authorized and paid from appropriation for "withdrawal of denaturalized alcohol," namely: Chief chemist, three thousand dollars; first assistant chemist, one thousand eight hundred dollars; one clerk of class four; one clerk of class three; four clerks of class two; three clerks of class one; one messenger; in all, eighteen thousand two hundred and forty dollars.

For stamp agent, one thousand six hundred dollars; stamp agent, nine hundred dollars; counter, nine hundred dollars; in all, three thousand four hundred dollars, the same to be reimbursed by the stamp manufacturers.

* * * * *

The employment of an additional force of revenue agents, inspectors, deputy collectors, clerks, laborers, and other assistants was authorized by act of June 25, 1910 (deficiency appropriation act, 36 Stat., 780), to carry out the provisions of the corporation tax act, and also by the deficiency appropriation act of March 4, 1911 (36 Stat., page 1197), p. 328.

SEC. 3. The appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of any persons incapacitated otherwise than temporarily for performing such service, and the heads of departments shall cause this provision to be enforced.

A similar provision was in the appropriation act of February 24, 1899 (30 Stat., 846; Supp. R. S., 946), and has been continued since.

The act of August 2, 1886 (24 Stat., 209), provided for "an analytical chemist and a microscopist, who shall each be appointed by the Secretary of the Treasury, and shall each receive a salary of two thousand five hundred dollars per annum;" and provided that "the Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose."

There has been no appropriation for a microscopist since July 1, 1895.

A fourth class clerk is an inferior officer of the United States within the meaning of article 2, section 2, of the Constitution. (27 Op. Atty. Gen., 219.)

As to officer's right to whole amount of the annual salary fixed by the Revised Statutes, although Congress has appropriated a less amount as compensation for the fiscal year. (Wallace's case, 2 Lawrence Dec., 376; 28 Int. Rev. Rec., 271; Fisher's case, 15 Ct. Cls., 323; 109 U. S., 143.)

Extra compensation not allowed. Act June 20, 1874 (18 Stat., 109), see page 427.

Transfer of duties to clerks of lower class. Section 3, act August 15, 1876 (19 Stat., 143), see page 431.

Employees to be paid from specific appropriations. Act August 5, 1882 (22 Stat., 255), see page 432.

Transfers and details. Appendix, page 433.

Temporary detail of clerks. Section 166, Revised Statutes, as amended by section 3 of the act of May 28, 1896 (29 Stat., 140).

President's authority to prescribe regulations concerning appointments. (Sec. 1753, R. S., p. 431.)

Preference in appointment to public office of honorably discharged soldiers. (Sec. 1754, R. S., p. 431; 17 Op. Atty. Gen., 194.)

Correspondence with the Office of Internal Revenue. (Int. Rev. Cir. No. 550; T. D. 1900, No. 29: Reg. No. 2 revised, p. 106.)
Dept. Cir. No. 30, Apr. 28, 1908.

Formulas for official communications.

Official correspondence. (T. D. 1572, Dec. 9, 1909.)

An act to regulate and improve the civil service of the United States (civil-service act). Act January 16, 1883 (22 Stat., 403).

Civil-service rules and executive orders, with notes on the rules and legal decisions, edition of 1910.

Subordinate officers of the several departments should communicate with Congress on matters involving legislation through the heads of their departments. (17 Op. Atty. Gen., 254.)

Pres. Taft's order prescribing method of communication with Congress. (Dept. Cir. No. 64, 1909, T. D. 30151.)

Pres. Roosevelt's order. (Dept. Cir. No. 11, Jan. 29, 1906.)

Employee wrongfully suspended. (Civil-service law; U. S. v. Wickersham, 201 U. S., 390.)

Reinstatements. (19 Op. Atty. Gen., 416, 434, 533; 25 ibid., 618.)

With the exception of section 13, act of January 16, 1883, reproduced in section 120 of the criminal code (act of Mar. 4, 1909), which prohibits promotion, degradation, removal, or discharge of any officer or employee for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, no legislative declaration expressly bearing upon removals from office is made. (Taylor v. Taft, 24 App. D. C., 95.)

Civil-service rules promulgated by the Executive, so far as they deal with the Executive right of removal, are but expressions of the will of the President, and are regulations imposed by him upon his own action, or that of heads of departments appointed by him. They do not give the employees within the classified civil service any such tenure of office as to confer upon them a property right in the office or place. (Morgan v. Nunn (1898), 84 Fed. Rep., 551; Page v. Moffett, 85 Fed. Rep., 38; T. D. 19027, 1898; Keim v. U. S., 177 U. S. 290, affirming 33 Ct. Cls., 174.)

Members of a family in public service limited. (18 Op. Atty. Gen., 83; 26 ibid., 260, 301.)

Monthly salaries. Method of prorating for fractional part of a month. (XIII Comp. Dec., 1.)

Rules for division of time and computation of pay for persons in the Government service receiving a yearly or monthly compensation. (Sec. 6, Act of June 30, 1906; 34 Stat., 763 (sundry civil appropriation act); Dept. Cir. No. 67, July 5, 1906.)

SEC. 7. [Act of March 15, 1898; 30 Stat., 317. (Legislative, executive, and judicial appropriation act.)]

That section five of the Act making appropriations for legislative, executive, and judicial expenses, approved March third, eighteen hundred and ninety-three, is hereby amended to read as follows:

Hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class, in their respective Departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the heads of the Departments may, by special order, stating the reason, further extend the hours of any clerk or employee in their Departments, respectively; but in case of an extension it shall be without additional compensation: *Provided* further, That the head of any Department may grant ^{seven hours' time required of clerks and other employees.} Thirty day's annual leave with pay.

thirty days' annual leave with pay in any one year to each clerk or employee: *And provided further*, That where some member of the immediate family of a clerk or employee is afflicted with a contagious disease and requires the care and attendance of such employee, or where his or her presence in the Department would jeopardize the health of fellow-clerks, and in exceptional and meritorious cases, where a clerk or employee is personally ill, and where to limit the annual leave to thirty days in any one calendar year would work peculiar hardship, it may be extended, in the discretion of the head of the Department, with pay, not exceeding thirty days in any one case or in any one calendar year.

This section shall not be construed to mean that so long as a clerk or employee is borne upon the rolls of the Department in excess of the time herein provided for or granted that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave. * * *

The act of July 7, 1898 (30 Stat., 653), provides that "Nothing contained in section seven of the act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year eighteen hundred and ninety-nine, approved March fifteenth, eighteen hundred and ninety-eight shall be construed to prevent the head of any Executive Department from granting thirty days annual leave with pay in any one year to a clerk or employee, notwithstanding such clerk or employee may have had during such year not exceeding thirty days leave with pay on account of sickness as provided in said section seven. (Dept. Cir. No. 52, July 7, 1908.)

Hours of labor. (Cir. No. 655; T. D. 756.) Time records. Hours of work (Cir. No. 67, Dec. 27, 1910. T. D. 31150).

Meaning of the phrase "Exceptional and meritorious." (20 Op. Atty. Gen., 716.)

Recording clocks not to be used. (Act July 7, 1898; 30 Stat., 655.)

It shall be the duty of the heads of the several executive departments of the Government to report to Congress each year in the annual estimates the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency. (Sec. 2, act of July 11, 1890, Supp. R. S., vol. 1, 2d ed., p. 773; 26 Stat., 268.)

Term of temporary service extended. SEC. 4. [Act of February 24, 1899; 30 Stat., 889. (*Legislative, executive, and judicial appropriation act, 1900.*)]

* * * * *

No honorary service roll. The establishment of a civil pension roll or an honorable service roll, or the exemption of any of the officers, clerks, and persons in the public service from the existing laws respecting employment in such service, is hereby prohibited: *Provided*, That the thirty days' annual leave of absence with pay in any one year to clerks and employees in the several Executive Departments authorized by existing law shall be exclusive of Sundays and legal holidays.

Thirty days' annual leave of absence.

Dept. Cir. No. 66, December 12, 1910. Regulations relative to leaves of absence promulgated; effective January 1, 1911.

SEC. 3. [*Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1903, approved Apr. 28, 1902. (32 Stat., 120, 171.)*] Temporary clerks transferred to classified service.

That the additional clerks on the temporary rolls and other employees rendered necessary because of increased work incident to the war with Spain, and under the Act of June thirteenth, eighteen hundred and ninety-eight, providing for war expenditures and for other purposes, heretofore appointed and who are now employed in the several departments of the Government, are hereby transferred to the classified service as of their present grade or rate of compensation, respectively, and shall be continued in the several departments where now employed, without further examination, subject, however, to transfer, promotion, or removal the same as other clerks and employees in the classified service.

* * * * *

Previous laws providing for temporary clerks.

Section 3, act of June 13, 1898 (30 Stat., 448).

Act of July 7, 1898, deficiency appropriation bill (30 Stat., 696, 705). This act provided for an appropriation of \$500,000 for additional temporary force in the Internal-Revenue Service, to be available during the fiscal year 1899, the office force in the Internal-Revenue Bureau to be appointed by the Secretary of the Treasury on the recommendation of the Commissioner of Internal Revenue.

Act of February 24, 1899, legislative, executive, and judicial appropriation act for 1900 (30 Stat., 865).

Appropriation act for 1901, legislative, executive, and judicial, approved April 17, 1900 (31 Stat., 107, 133).

Appropriation act for 1902, legislative, executive, and judicial, approved March 3, 1901 (31 Stat., 982, 1009).

SEC. 4. [*Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1909, approved May 22, 1908. (35 Stat., 244.)*] It shall be the duty of the head of each executive department and other government establishment at Washington to submit to Congress at the beginning of

each regular session a statement showing in detail what officers or employees (other than special agents, inspectors, or employees, who in the discharge of their regular duties are required to constantly travel) of such executive department or other government establishment have traveled on official business from Washington to points outside of the District of Columbia during the preceding fiscal year, giving in each case the full title of the official or employee, the destination or destinations of such travel, the business or work on account of which the same was made, and the total expense to the United States charged in each case.

Travel expenses of department employees at Washington to be annually reported.

APPROPRIATION FOR COLLECTING INTERNAL REVENUE.

[Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1911, approved June 17, 1910 (36 Stat., 494).]

* * * * *

For salaries and expenses of collectors of internal revenue, and deputy collectors, and surveyors, and clerks, messengers, and janitors in internal-revenue offices, two million one hundred and thirty-five thousand dollars: *Provided*, That no part of this amount be used in defraying the expenses of any officer, designated above, subpoenaed by the United States courts to attend any trial before a United States court or preliminary examination before any United States commissioner, which expenses shall be paid from the appropriation for "Fees of witnesses, United States courts."

For salaries and expenses of forty revenue agents provided for by law, and fees and expenses of gaugers, salaries and expenses of storekeepers and storekeeper-gaugers, two million four hundred and twenty thousand dollars.

For rent of offices outside of the District of Columbia, telephone service, and other miscellaneous expenses incident to the collection of internal revenue, and for the purchase of necessary books of reference and periodicals for the chemical laboratory and law library, at a cost not to exceed five hundred dollars, and reasonable expenses for not exceeding sixty days immediately following the injury of field officers or employees in the internal-revenue service while in line of duty, of medical attendance, surgeon's and hospital bills made necessary by reason of such injury, and for horses crippled or killed while being used by officers in making raids, not exceeding one hundred and fifty dollars for any horse so crippled or killed, one hundred thousand dollars.

* * * * *

Injuries received in line of duty.

The portion italicized was in the legislative, executive, and judicial appropriation act for 1910 (act of Mar. 4, 1909; 35 Stat., 845, 871; T. D., 1363; T. D. 1640).

The Act making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June 30, 1912, contained the same provisions as above, except the amount appropriated for salaries and expenses of collectors, etc., was \$2,150,000, and the amount for salaries and expenses of 40 revenue agents, etc., was \$2,520,000. (36 Stat., 1196.)

For expenses of collecting the corporation tax, see p. 328.

That hereafter law books, books of reference, and periodicals for use of any Executive Department, or other Government establishment not under an Executive Department, at the seat of government, shall not be purchased or paid for from any appropriation made for contingent expenses or for any specific or general purpose unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation. [Sec. 3, legislative, executive, and judicial appropriation act, approved Mar. 15, 1898 (30 Stat., 277).]

Books of reference defined. (VI Comp. Dec., 227, 312.)

SEC. 7. [Act of Mar. 15, 1898; 30 Stat., 316. (*Legislative, executive, and judicial appropriation act for 1899.*)]
 * * * Hereafter it shall be the duty of the head of each Executive Department to require monthly reports to be made to him as to the condition of the public business in the several bureaus or offices of his Department at Washington; and in each case where such reports disclose that the public business is in arrears, the head of the Department in which such arrears exist shall require, as provided herein, an extension of the hours of service to such clerks or employees as may be necessary to bring up such arrears of public business.

Hereafter it shall be the duty of the head of each Executive Department, or other Government establishment at the seat of government, not under an Executive Department, to make at the expiration of each quarter of the fiscal year a written report to the President as to the condition of the public business in his Executive Department or Government establishment, and whether any branch thereof is in arrears.

SEC. 239. Separate accounts shall be kept at the Department of the Treasury of all moneys received from internal duties or taxes in each of the respective States, Territories, and collection-districts, and of the amount of each species of duty and tax that shall accrue; so as to exhibit, as far as may be, the amount collected from each source of revenue, with the moneys paid as compensation and for allowances to the collectors and deputy collectors, inspectors, and other officers employed in each of the respective States, Territories, and collection districts.

SEC. 261. The Secretary of the Treasury shall annually, in the month of December, lay before Congress an abstract, in tabular form, of the separate accounts of moneys received from internal duties or taxes in each of the respective States, Territories, and collection-districts, required by section two hundred and thirty-nine, to be kept at the Treasury.

Annual detailed report of receipts and expenditures. Section 15, act of July 31, 1894 (28 Stat., 210).

SEC. 196. The head of each Department, except the Department of Justice, shall furnish to the Congressional Printer copies of the documents usually accompanying his annual report, on or before the first day of November in each year, and a copy of his annual report on or before the third Monday in November in each year.

Provided, That of the reports of * * * the Commissioner of Internal Revenue, * * * the usual number only shall be printed. Act of January 12, 1895 (28 Stat., 601, 616); Supp., R. S., vol. 2, p. 356.

No head of any Executive Department, or of any bureau, branch, or office of the Government, shall cause to be printed, nor shall the Public Printer print, any document or matter except that which is authorized by law and necessary to the public business; and executive officers, before transmitting their annual reports, shall carefully examine the same and all

Monthly reports on condition of business.

Quarterly reports.

Account of receipts of internal revenue.

Abstract of receipts from internal taxes.

Annual report of head of Department.

accompanying documents, and exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports are necessary and relate entirely to the transaction of the public business. Section 94, act of January 12, 1895 (28 Stat., 601).

No printing and binding shall be done by the Public Printer for the several Executive and Judicial Departments of the Government in any fiscal year in excess of the amount of the allotment for such Departments.

Heads of Executive Departments shall direct whether reports made to them by bureau chiefs and chiefs of divisions shall be printed or not. Act of Aug. 5, 1892 (27 Stat., 388).

No report, document, or publication of any kind distributed by or from an Executive Department or Bureau of the Government shall contain any notice that same is sent with "the compliments" of an officer of the Government, or with any special notice that it is so sent, except that notice that it has been sent, with a request for an acknowledgment of its receipt, may be given. Act of January 12, 1895. (28 Stat., 601, 620.)

TITLE XXXV—INTERNAL REVENUE.

REVISED STATUTES.

CHAPTER ONE.

OFFICERS OF INTERNAL REVENUE.

Sec.

- 3140 (amended). Definitions.
3141. Collection districts.
3142. Collectors.
3143 (amended). Collectors' bonds.
3144 (amended). Collectors to be disbursing agents.
3145. (*Obsolete.*)
3146. Accounts of collectors adjusted according to fiscal year.
3147. Apportionment of compensation of collectors.
[3148]. Secs. 12 and 13, act February 8, 1875, as amended. Collectors' compensation and allowances. Deputy collectors and their salaries.
3149 (amended). Disability or vacancy in office of collector.
[3149a]. Authority to detail deputy collectors.
3150. Deputy collector, when entitled to collector's salary.
3151. *Repealed.*
3152 (amended). Internal-revenue agents.
[3152a]. Additional agents.
3153. Storekeepers; salaries and bonds. Office of storekeeper and gauger.
[3153a]. Compensation and bond.
[3153b]. Storekeepers at distilleries that mash less than 60 bushels of grain per day.
[3153c]. Storekeepers at distilleries whose registered capacity is 20 bushels or less.
[3153d]. Assignment of storekeeper and gauger.
3154. Assignment and transfer of storekeepers.
[3154a.] Sec. 63, act Aug. 28, 1894 (amended). Compensation of store-keepers and gaugers. Transfers and details.
3155. Temporary storekeepers.
3156. Gaugers.
[3156a] Assignment of gaugers.
3157. Gaugers' fees.
[3157a]. Same.
[3157b]. Gaugers only paid for actual service.

Sec.

- [3157c]. Act July 7, 1898. Gaugers' compensation.
[3157d]. Act June 23, 1910. Cumulative annual leave of absence to storekeepers, gaugers, and storekeeper-gaugers.
Act July 7, 1884. Officers in commission not to exceed 15 per cent of the number employed.
3158. Statement under oath of fees, etc.; penalty.
3159. *Repealed.*
3160. *Repealed.*
3161. Officers in charge of exportation and drawbacks.
3162. Collectors and superintendents of exports may administer oaths.
3163 [and 3163a] (amended). Duties of collectors and internal-revenue agents. Commissioner may transfer and suspend certain officers.
3164. Collectors to report violations of law to district attorney.
3165 (amended). Revenue officers who may administer oaths and take evidence.
3166. Revenue officers specially authorized to make seizures.
3167 (amended). Revenue officers disclosing operations of manufacturers, etc.; penalty.
3168. Officers not to be interested in certain manufactures; penalty.
3169. Officers guilty of extortion, receiving unlawful fees, and other unlawful acts; penalty.
[3169a]. Collectors, etc., issuing stamps before payment; penalty.
[3169b]. Laws imposing punishment on internal-revenue officers applied to certain other classes of persons.
3170. District attorney or marshal accepting or demanding anything for compromise of violations of law.
3171. Officers suffering injuries may maintain suit for damages.

Definitions.

SEC. 3140 [as amended by the act of Feb. 27, 1877 (19 Stat., 240)]. The word "State," when used in this Title, shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out its provisions. *And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person," as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.*

SEC. 1. R. S. In determining the meaning of the Revised Statutes, or of any act or resolution of Congress passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to females; * * *. the word "person" may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an "oath" shall be deemed complied with by making affirmation in judicial form.

SEC. 2. The word "county" includes a parish, or any other equivalent subdivision of a State or Territory of the United States.

SEC. 3. The word "vessel" includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 4. The word "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

SEC. 5. The word "company" or "association," when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association," in like manner as if these last-named words, or words of similar import, were expressed.

Person includes corporations. (23 Int. Rev. Rec., 141; 15 Op. Atty. Gen., 230.) The term "corporation," as used in the acts of Congress touching internal revenue, does not include a State. (Georgia v. Atkins, collector, 8 Int. Rev. Rec., 113.) The term "person" does not include a State. (12 Op. Atty. Gen., 176.)

When a State engages in commercial business for a profit, it can not claim exemption from taxation on the principle that it is a tax on the instrumentalities of the State government. (South Carolina v. U. S., 39 Ct. Cls., 257; T. D. 759; 199 U. S., 437; T. D. 961.)

As to the meaning of the term "revenue law." (United States v. Hill, 123 U. S., 681.)

Collection districts.

SEC. 3141. For the purpose of assessing, levying, and collecting the taxes provided by the internal-revenue laws, the President may establish convenient collection-districts, and for that purpose he may subdivide any State, Territory, or the District of Columbia, or may unite two or more States or Territories into one district, and may from time to time alter said districts: *Provided,* That the number of districts in any State shall not exceed the number of Representatives in Congress to which such State was entitled in the Thirty-seventh Congress, except in such States as were entitled to an increased representation in the Thirty-eighth Congress, in which States the number of districts shall not exceed the number of Rep-

resentatives to which any such State was so entitled: *And provided further*, That in the State of California the President may establish a number of districts not exceeding the number of Senators and Representatives to which said State *was* entitled, in the Thirty-seventh Congress.

The power of the President to change or alter collection districts considered. (10 Op. Atty. Gen., 469; 12 Op. Atty. Gen., 51; 14 Op. Atty. Gen., 215.)

Supreme court will take judicial notice that the United States is divided into collection districts for revenue purposes. (*United States v. Jackson*, 104 U. S., 41; 28 Int. Rev. Rec., 12.)

SEC. 3142. The President, by and with the advice and consent of the Senate, shall appoint for each collection district a collector, who shall be a resident of the same. When two or more collection-districts are united by him, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district.

Collectors.

The legislative appropriation act for 1877, passed August 15, 1876 (19 Stat., 152), reduced the number of internal-revenue districts to 131.

The appropriation act for 1878, passed March 3, 1877 (19 Stat., 303), reduced the number to 126. (Supp. R. S., 135.)

Executive order of June 25, 1883, as modified by orders of June 30, 1883, and October 13 and December 5, 1883, reduced the number of districts from 126 to 84.

Executive order of February 13, 1884, reestablished the district of Nevada (which in 1883 was consolidated with Fourth California), making the number of districts 85.

The number of districts was reduced from 85 to 63 by Executive order of May 21, 1887. (33 Int. Rev. Rec., 157.)

Hawaii constituted an internal-revenue district by act of April 30, 1900 (31 Stat., 141), to take effect June 14, 1900, page 373. (T. D. 157.)

District of Oklahoma established February 6, 1911.

The number of collection districts in the country at present (February, 1911) is 67, including the district of Oklahoma.

Under existing law there is no limitation placed on the term of office of collectors of internal revenue, and in this respect this office differs from other civil officers of the Government. (Commissioners' reports, 1877 and 1881.)

Judicial notice will be taken of the official character and the official acts of the collector and his deputy. (*Leach v. Snyder* (1886), 112 Pa., 161.)

SEC. 238. The commissions of all officers employed in levying or collecting the public revenue shall be made out and recorded in the Department of the Treasury, and the seal of the Department affixed thereto. But the seal shall not be affixed to any such commission before the same has been signed by the President.

SEC. 3143 [as amended by sec. 2, act Mar. 1, 1879 (20 Stat., 327), and by sec. 5, act Mar. 2, 1895 (28 Stat., 807)]. Every collector, before entering upon the duties of his office, shall execute a bond for such amount as may be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, with not less than five sureties, to be approved by the Solicitor of the Treasury, conditioned that said collector shall faithfully perform the duties of his office according to law, and

Collector's bonds.

Verbal error
corrected.
Act Feb. 27,
1877 (19 Stat., 20).

shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession; and he shall, from time to time, renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct, with such further conditions as the said Commissioner shall prescribe; *and he shall execute a new bond whenever required so to do by the Secretary of the Treasury, with such conditions as may be required by law or prescribed by the Commissioner of Internal Revenue, with not less than five sureties; which new bond shall be in lieu of any former bond or bonds of such collector in respect to all liabilities accruing after the date of its approval by the Solicitor of the Treasury.* Said bonds shall be filed in the office of the Secretary of the Treasury.

Proceedings against delinquent collectors. (Secs. 3624, 3625, 3633, Appendix, pp. 407, 408.)

Claims for credit in suits brought by the United States. (Sec. 951, p. 424.)

Act relative to allowing certain corporations to be accepted as surety. (Act August 13, 1894.) See pp. 368, 369.

A bond takes effect upon its acceptance and approval. (19 How., 73.)

Collector approving worthless bonds; liability of collector's bond for loss sustained by Government. (*United States v. Thorn*, 9 Int. Rev. Rec., 65.)

Collectors are liable to prosecution for accepting fraudulent bonds, as well as liable on their official bonds for loss. (*United States v. Callicott*, 7 Int. Rev. Rec., 177; Fed. Cas. No. 14710.)

Collector and deputy collector indicted jointly with others.

Allowance to collectors; set-offs. (*Hall v. United States*, 91 U. S. (1 Otto), 559.)

Gaugers' fees received by collectors; Treasury settlements. (*Soule et al v. United States*, 100 U. S. (10 Otto), 8; 26 Int. Rev. Rec., 4.)

Question of credits, time when compensation commences. (*United States v. Flanders*, 112 U. S., 88; 30 Int. Rev. Rec., 397.)

Due diligence. (*United States v. Kimball*, 101 U. S. (11 Otto), 725.)

Money received from sale of stamps; use of old form of bond. (*United States v. Hough*, 103 U. S. (13 Otto), 71.)

Bond not void because district is not stated. (*United States v. Jackson*, 104 U. S. (14 Otto), 41; 28 Int. Rev. Rec., 12.)

Collectors' receipts; certified transcripts. (*United States v. Hunt*, 105 U. S. (15 Otto), 183; 28 Int. Rev. Rec., 134.)

Evidence. (*United States v. Stone*, 106 U. S. (16 Otto), 525.)

The addition of a condition, not specifically named in the act of Congress, that obligors shall not be liable if each and every deputy appointed by the collector shall truly and faithfully execute and discharge all the duties of such deputy collector according to law, does not relieve the sureties. Mode of settling accounts of collectors; mode of prosecuting suits, etc. (*Chadwick v. United States*, 3 Fed. Rep., 750.)

Liability of sureties: Sureties liable for taxes collected and not accounted for. (*United States v. Harry Chase et al.*, 22 Int. Rev. Rec., 11; *King v. United Stats*, 99 U. S., 229.)

A bond requiring a faithful performance of official duty is as binding upon the principal and his sureties as if all the statutory duties and official regulations of the office were inserted in the bond. (*Pond v. United States*, 111 Fed. Rep., 995.)

Liability of sureties when duties are imposed on principal by laws subsequent to the execution of the bond. (*United States*

v. McCartney, 26 Int. Rev. Rec., 28.) This question and other questions relating to sureties on official bonds considered. (30 Int. Rev. Rec., 161, 166.)

Change in the regulations subsequent to the execution of bond putting deputy collectors in the classified civil service did not relieve the sureties from liability. (*Laffan v. U. S.* 122 Fed. Rep., 333; *T. D.* 653.)

Liability of a surety on an official bond is stricti juris; surety not to be held responsible for the conduct of his principal beyond the scope of his undertaking reasonably construed. (*United States v. Adams et al.*, 31 Int. Rev. Rec., 261.)

In a suit on collector's bond, where one of the sureties had signed the bond in blank already signed by the principal, with an understanding with the principal that only a certain amount was to be inserted therein as penalty, and with the further understanding that two additional sureties were to be furnished, each worth a certain sum, and where the bond was afterwards completed by the insertion of an amount larger than that agreed upon, and signed by two worthless sureties, and afterwards the bond was delivered to the proper officer of the Government, who accepted it in the belief that it was properly executed and with no notice of the private agreement, held that the first surety was liable. Case not distinguished in principle from *Dair v. United States* (16 Wall., 1). (*Butler v. United States*, 21 Wall., 272.)

A judgment against a defaulting collector does not bind a surety on his bond unless the surety was a party to the action; and no Federal statute creates a lien on the property of a collector of internal revenue or his sureties from the execution of his official bond, or from the date of any default thereon. (*United States v. Ingates*, circuit court, southern district of Alabama (1891); 48 Fed. Rep., 251.)

Accounts must be stated to show liability under each bond. (*United States v. Barton Abel*; 15 Int. Rev. Rec., 41 and 50.)

Public officers liable for all moneys that come into their hands officially. (*United States v. Prescott*, 3 How., 378; *Pond et al v. U. S.* (suit on bond of Collr. Welburn), 111 Fed. Rep., 989.)

The payment of money to the deputy collector without receiving stamps therefor was not a payment of the tax on the brandy; the money did not become public money in the hands of the collector, and the sureties were not liable for it. (*United States v. Hermance et al.*, 15 Blatch., 6.)

Stamps are the equivalent of money in the hands of the collector. (*Pond v. United States*, 111 Fed. Rep., 989.)

Liabilities of sureties on temporary bond. (*United States v. Kirkpatrick*, 9 Wheat., 720.)

The collector's bond is a contract for the indemnity of the United States alone and not for the indemnity of private persons. (*Clark v. United States*, 60 Ga., 156.)

The direction of the commissioner to execute a new bond must be considered as the direction of the Secretary of the Treasury. (*Soule v. United States*, 100 U. S., 8.)

Correction of error: If the name of a person in a written instrument was wrong, or applies to a wrong person, the court will correct it by construction, when it is apparent upon the face of the instrument that the error exists and in what manner it should be corrected to carry out the intention of the parties. (*Richmond v. Woodward*, 32 Vt., 283.)

A married woman will not be accepted as a surety.

No surety can hold office under his principal. (43 Int. Rev. Rec., 438; *Dept. Cir. No. 70*, Nov. 23, 1907.)

Death of surety does not relieve estate. (*Pond v. United States*, 111 Fed. Rep., 989.)

Official bonds—preparation, sureties, renewal, notices of approval, etc. (*Dept. Cir. No. 65*, May 29, 1905.)

Rules regulating the execution of bonds under the Treasury Department. (*Dept. Cir. No. 70*, Nov. 23, 1907.)

Where under the act of March 2, 1895, page 371, an officer renews his bond by giving a bond during the same term of office, the new bond does not operate to release the sureties on the first bond from liability for future transactions, but the sureties on the old and new bonds are jointly and severally liable therefor. (5 Comp. Dec., 918.)

Official bonds are to be examined every two years, and to be renewed every four years or oftener. These bonds are to be filed with the Secretary of the Treasury. (Sec. 5, act of Mar. 2, 1895, 28 Stat., 764.) See page 371.

Notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials; limitation of time within which suit shall be brought against sureties on said bond. (Act of Aug. 8, 1888.) See page 372.

SEC. 3144 [as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327), and by sec. 5 of the act of Mar. 2, 1895 (28 Stat., 807)]. It shall be the duty of collectors of

Collectors to internal revenue to act as disbursing agents of the Treasury for the payment of all expenses of collection of taxes and other expenditures for the internal revenue service within their respective districts, under regulations and instructions from the Secretary of the Treasury, on giving good and sufficient bond, with such sureties, in such form, and in such penal sum, as shall be prescribed * * * and approved by the Secretary of the Treasury, for the faithful performance of their duties as such disbursing agents; but no additional compensation shall be paid to collectors for such services.

The words "by the First Comptroller of the Treasury" omitted in view of the following act: Hereafter all bonds of * * * collectors of internal revenue, * * * either as such officers or as disbursing officers of the Treasury, * * * and all such bonds now on file in the Office of the Comptroller of the Treasury shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in regard to such bonds, as the successor of the * * * First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury, * * *. [Sec. 5, act of Mar. 2, 1895, (28 Stat., 807).]

As to duties of disbursing officers, see Appendix, section 3620 et seq., page 404.

Disbursing officers are responsible for the identity of the parties to whom they are authorized to pay money and for the genuineness of signatures to the vouchers returned by them. (Hartson v. United States, 21 Ct. Cls., 451.)

The bond required from the collector as disbursing agent is separate from and additional to his bond as collector. (Hall v. United States, 17 Ct. Cls., 39. See Chadwick v. United States, 3 Fed. Rep., 750.)

Bond of collector as disbursing agent held to cover disbursements to storekeepers, although the office of storekeeper was created by a law passed subsequent to date of bond. (United States v. McCartney and others, 1 Fed. Rep., 104; 26 Int. Rev. Rec., 28.)

The sureties on this bond (if individual) must be other than those on bond as collector; but a corporate surety, duly qualified, may be accepted as surety on both bonds.

This bond must not be executed until after the collector has fully qualified as such by executing his bond as collector and taking the oath of office. (Dept. Cir. No. 191, Oct. 12, 1897; 43 Int. Rev. Rec., 438.)

SEC. 3145 [*as to collector's salary and allowances, Accounts, in-
(Obsolete.)*] Superseded by sections 12 and 13, act of <sup>June 1, 1875, as amend-
ing</sup> ^{of} ^{fiscal year.} February 8, 1875, as amended. [Sec. 3148.]

SEC. 3146. In adjusting the accounts of collectors (accruing after June thirtieth, eighteen hundred and sixty-four) and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed.

Collectors' revenue accounts to be rendered quarterly, page 108.
Collectors' disbursing accounts to be rendered monthly, page 406.
See section 237, Revised Statutes, commencement of fiscal year. (31 Int. Rev. Reg., 197.)

SEC. 3147. When any part of the compensation of the collector of any district is by commission upon assessments or collections, and, in consequence of a new appointment, is due to more than one collector within the same year, such commissions shall be apportioned between such collectors; but in no case shall a greater amount of the commissions be allowed to two or more collectors in the same district than shall have been authorized by law to be allowed to one collector, and the same rules shall apply to the salaries and commissions of assessors and collectors heretofore earned and accrued.

But no payment shall be made to collectors, on account of salaries or commissions, without the certificate of the Commissioner of Internal Revenue that all reports required by law or regulation have been received, or that a satisfactory explanation has been rendered to him of the cause of delay.

See section 12, act of July 31, 1894, page 405.

As to certificate of due diligence, see section 3218, page 113.

Circular No. 375, February 17, 1884 (30 Int. Rev. Reg., 55), no payments to be made to a collector on account of salaries, etc., until all reports required by the regulations are received or the failure to render same satisfactorily explained.

[SEC. 3148.] [Sec. 12, act of Feb. 8, 1875 (18 Stat., 309), as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327).] That each collector of internal revenue shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue.

Allowances shall also be made in like manner for salary and office expenses of collectors, all of which shall be in lieu of the salary and commissions heretofore provided by law:

Provided, however, That the salaries of collectors shall be fixed at two thousand dollars each per annum where the annual collections amount to twenty-five thousand dollars or less, and shall, by the Secretary, on the recommendation of the Commissioner, be graduated up to the

Apportionment
of compensation
of collectors.

Certificate of
Commissioner re-
quired.

Deputy collect-
ors.

Salaries of dep-
uties and collect-
ors.

*This word "or" is erroneously printed "of" in the Revised Statutes, edition of 1878.

maximum limit of four thousand five hundred dollars; which latter sum shall be allowed in all cases where the collections amount to one million of dollars or upward; and the collector shall have power to revoke the appointment of any such deputy, giving such notice thereof as the Commissioner of Internal Revenue may prescribe, and to require and accept bonds or other securities from any deputy; and actions upon such bonds may be brought in any appropriate district or circuit court of the United States; which courts are hereby given jurisdiction of such actions concurrently with the courts of the several States.

Deputy collector's authority and responsibility.

Each such deputy shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself; but each collector shall, in every respect, be responsible, both to the United States and to individuals, as the case may be, for all moneys collected, and for every act done or neglected to be done, by any of his deputies while acting as such.

The right of collectors to commissions on taxes collected by the sale of tax-paid spirit stamps (sec. 3314, p. 208) was not taken from them by the act of March 1, 1879. But the total net compensation of collectors can not in any case exceed \$4,500 per annum. (*United States v. Landram*, 32 Int. Rev. Rec., 151; 118 U. S., 81.)

As to compensation for duties performed before taking oath. (*United States v. Flanders*, 112 U. S., 88; 30 Int. Rev. Rec., 397.)

Additional allowance of salary to collectors. (Utah case, 2 Lawrence Dec., 559; 28 Int. Rev. Rec., 293.)

An action by a collector of internal revenue against a deputy collector on his official bond may be removed from the State court to the Federal court under the act of March 3, 1875. (Orner v. Saunders, 3 Dillon, 284.)

The act of August 5, 1909, page 372, does not apply to bonds given by deputy collectors to the collector. (28 Op. Atty. Gen., 28.)

A deputy collector is authorized to act as such when his commission has been signed and placed in the mail and he is notified thereof by telegram. (*United States v. Sykes*, 58 Fed. Rep., 1000.)

No appeal lies from the decision of the Secretary as to making further allowances. Compensation of collectors can not be revised by the courts. (*United States v. Hall*, 2 Dillon, 426; 91 U. S., 559.)

Deputy collectors of internal revenue are appointed under section 3148, Revised Statutes, and the power of removal rests with the appointing power, the collector, subject to such requirements as to notice as the Commissioner of Internal Revenue may prescribe, and such action can not be reviewed by an appeal to the courts. (Page v. Moffett, collector, U. S. circuit court, district of New Jersey, 85 Fed. Rep., 38; T. D. 19027, 1898.)

Court of equity will not, by injunction, restrain a collector from making a removal of a subordinate employee. (Morgan v. Nunn, collector, United States circuit court, middle district of Tennessee, 84 Fed. Rep., 551; T. D. 19027, 1898; White, collector, v. Berry (1898), 170 U. S., 366.)

Civil-service law, power of removal. (26 Op. Atty. Gen., 363.)

Appointment and dismissal of deputy collectors. (Cir. No. 717, Mar. 24, 1908; T. D. 1328.)

Deputy collectors included in the classified service. Executive order, November 7, 1906. (T. D. 1091.)

Power and duties of deputy collectors. (Landram *v.* U. S., 16 Ct. Cls., 74.)

Assignment of deputy collectors of internal revenue to special or general duty. (Circular letter May 12, 1899, T. D. 21150.)

Deputy collectors' diary report and monthly account for services. (T. D., 209, Jan. 21, 1901; T. D., 1471, Mar. 20, 1900; T. D., 1590, Jan. 28, 1910; T. D., 1630, May 21, 1910.)

For pay purposes all months in the year are reckoned as containing thirty days. (XIII Comp. Dec., 1.)

Entire time of deputy collectors must be devoted to official duties. (Circular No. 532, May 11, 1899, T. D., 21149.)

Transfer of deputy collector as storekeeper-gauger. (T. D., 1331.)

SEC. 13. [Act of Feb. 8, 1875 (18 Stat., 307), as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327).] That there shall be further paid, after the account thereof has been rendered to and approved by the proper officers of the Treasury, to each collector, his necessary and reasonable charges for advertising, stationery, and blank books used in the performance of his official duties, and for postage actually paid on letters and documents received or sent and exclusively relating to official business, but no such account shall be approved or allowed unless it states the date and the particular items of every such expenditure, and shall be verified by the oath of the collector: *Provided*, That the Secretary of the Treasury,

Collectors' advertising, stationery, etc.

on the recommendation of the Commissioner of Internal Revenue, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal duties collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered.

Further allowances.

But the total net compensation of a collector shall not in any case exceed four thousand five hundred dollars a year; and no collector shall be entitled to any portion of the salary pertaining to the office unless such collector shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.

Maximum net compensation of collector.

Deputy collector's pay. (Herndon's claim, 26 Int. Rev. Rec., 31 $\frac{1}{2}$; Herndon *v.* United States, 15 Ct. Cls., 446; 26 Int. Rev. Rec., 198; Wilson's case, 2 Lawrence Dec., 206.)

Salary of deputy collector. Are deputy collectors officers? (Landram *v.* United States, 16 Ct. Cls., 74; 27 Int. Rev. Rec., 80; Opinion of Attorney Gen. Bonaparte; 26 Op. Atty. Gen., 363.) See note under section 3169, page 81.

Questions of salary are questions of contract, and the Government can be sued in Court of Claims when it fails to pay collector his salary. (Patton *v.* United States, 7 Ct. Cls., 362.)

Compensation of collectors and deputy collectors (Reg. No. 2, revised, pp. 64-68.)

The salary of an officer begins from date of taking oath and entering on duty. (IV Comp. Dec., 59.)

Collectors of internal revenue shall render their revenue accounts quarterly. (Act of May 27, 1908; 35 Stat., 317, p. 108.)

freight and express bills to be paid by direct settlement. (T. D., 1372.)

Instructions relative to shipments of property by officers of the Internal Revenue Service, and payment of transportation charges on same. (T. D., 1562.)

Disability or
vacancy in office
of collector.

SEC. 3149 [as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327).] In case of the sickness or absence of a collector, or in case of his temporary disability to discharge his duties, they shall devolve upon his senior deputy, unless he shall have devolved them upon another of his deputies; and for the official acts or defaults of such deputies the collector and his sureties shall be held responsible to the United States.

Senior deputy
collector in
charge.

In case of a vacancy occurring in the office of collector, the deputies of such collector shall continue to act until his successor is appointed; and until a successor is appointed, the deputy of such collector senior in service shall discharge all the duties of collector, and also the duties of disbursing agent; and of two or more deputies appointed on the same day, the one residing nearest the residence of the collector when the vacancy occurred shall discharge the said duties until another collector is appointed.

When it appears to the Secretary of the Treasury that the interest of the Government so requires, he may, by his order, direct the said duties to be performed by such other one of the said deputies as he may designate.

Collector's bond
issuable for deputy
acting.

For the official acts and defaults of the deputy upon whom said duties are devolved remedy shall be had on the official bond of the collector, as in other cases; and for the official acts and defaults of such deputy as acting disbursing agent, remedy shall be had on the official bond of the collector as disbursing agent.

(See preceding
section, §3148.)

And any bond or security taken from a deputy by a collector, pursuant to section twelve of 'An act to amend existing customs and internal-revenue laws, and for other purposes,' approved February eight, eighteen hundred and seventy-five, shall be available to his legal representatives and sureties to indemnify them for loss or damage accruing from any act or omission of duty by the deputy so continuing or succeeding to the duties of such collector.

Suspension of Collector Francis Widmer on charges of fraud by supervisor. Deputy performing duties of collector entitled to compensation. (*United States v. Farden*, 99 U. S., 10, affirming, 13 Ct. Cls., 347; 25 Int. Rev. Rec., 55.)

Commissioner's power to suspend collectors. (Sec. 3163a.)

Death, resignation, or removal of collector; accounts. (Sec. 3219, p. 113.)

Offices of Deputy Collectors vacated by appointment of new Collector. 26 Op. Atty. Gen., 363. (T. D. 1328.)

Authority
detained.

SEC. [3149a.] [Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1901, approved April 17, 1900 (31 Stat., 107).] Provided, That the Commissioner of Internal Revenue is authorized to detail deputy collectors of internal revenue in one district for special duty in other dis-

tricts, and the deputy collectors so detailed shall be paid by the collector of internal revenue and disbursing agent for the district for which they are appointed and for which the allowance for their salary and expenses is made, the same as if all their services had been performed and expenses incurred in that district. * * *

Act of June 29, 1906 (34 Stat., 620), provides for a deputy collector in Porto Rico, page 374.

SEC. 3150. Any deputy collector who has performed or may perform, under authority of law, the duties of any collector in consequence of a vacancy in the office of said collector, shall be entitled to receive the salary and commissions allowed by law to such collector, or the allowance in lieu of said salary and commissions allowed by the Secretary of the Treasury to such collector, and the Secretary of the Treasury may make to such deputy collector such allowance in lieu of salary and commissions as he might lawfully make to such collector. And such deputy shall not be debarred from receiving such salary and commissions, or allowances in lieu thereof, by reason of the holding of another Federal office by said collector during the time for which such deputy acts as collector. But all payments to such deputy collector shall be upon duly audited vouchers.

SEC. 3151. [relative to inspectors of tobacco and cigars, repealed by act of Aug. 4, 1886 (24 Stat., 218).]

SEC. 3152. [as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327); act of July 7, 1884 (23 Stat., 172).] The Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ competent agents, not exceeding at any time twenty in number, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose; and he may, at his discretion, assign any such agent to duty under the direction of any officer of internal revenue, or to such other special duty as he may deem necessary; and no general or special agent or inspector, by whatever designation he may be known, of the Treasury Department, in connection with the internal revenue, * * * except as provided for in this title, shall be appointed, commissioned, employed, or continued in office.

The agents whose employment is authorized by this section shall be known and designated as internal-revenue agents, and they shall have all the powers of entry and examination conferred upon any officer of internal revenue, by sections thirty-one hundred and seventy-seven, thirty-two hundred and seventy-seven, thirty-two hundred and eighty-six, and thirty-three hundred and eighteen of the Revised Statutes; and all the provisions of said sections, including those imposing fines, forfeitures, penalties, or other punishments for the enforcement thereof, are hereby made applicable to the action of in-

Deputy collector,
or, when entitled
to collector's salary.

Internal-revenue agents.

Secs. 3177, 3277,
3286, 3318.

ternal-revenue agents, in the same manner as if such agents were specially named in each of said sections.

*Sees. 3167, 3168,
3169, 3171.* And all the provisions of sections thirty-one hundred and sixty-seven, thirty-one hundred and sixty-eight, thirty-one hundred and sixty-nine, and thirty-one hundred and seventy-one of the Revised Statutes shall apply to internal-revenue agents as fully as to internal-revenue officers.

The legislative, executive, and judicial appropriation act, approved July 7, 1884 (23 Stat., 172), provided that there shall not be employed exceeding 20 agents, in lieu of the number then authorized by law.

Before this act the number authorized was 35.

Ten additional internal-revenue agents were authorized by section 3, act of June 13, 1898 (30 Stat., 450).

Twenty additional clerks and agents authorized by section 47, act of June 13, 1898 (30 Stat., 450).

Revenue agents may be designated to examine books of corporations when they fail to make return. (Sec. 38, act of Aug. 5, 1909.)

Examination of carriers.—Carriers are prohibited from giving information concerning shipments handled by them, except in response to legal process from the court or proper State or United States officer. (Sec. 12, act of June 18, 1910, 36 Stat., 551.)

[SEC. 3152 a.] [*Extract from the legislative, executive, and judicial appropriation act approved April 28, 1902, (32 Stat., 120, 142).*] * * * and for salaries and expenses of twenty additional internal revenue agents to be appointed and employed by the Commissioner of Internal Revenue, and these twenty agents to be in lieu of the agents provided for and appointed under the provisions of sections three and forty-seven of the Act of June thirteenth, eighteen hundred and ninety-eight, providing for war revenue expenditures and other purposes, and these to be the only internal revenue agents employed in addition to those provided for in section three thousand one hundred and fifty-two of the Revised Statutes. The existing provisions of law with regard to internal revenue agents shall apply to the duties, compensation, and expenses of these twenty additional agents, * * *

Forty agents were provided for in the legislative, executive, and judicial appropriation act for the year 1911. (Act of June 17, 1910; 36 Stat., 494, p. 54.)

Additional agents were provided for by the act of June 25, 1910, deficiency appropriation act (36 Stat., 780), to be employed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for carrying out the provisions of section 38 of the act of August 5, 1909 (corporation excise tax), page 320.

Nothing in section 4, act of August 5, 1882 (22 Stat., 255), shall be construed to prevent the Commissioner of Internal Revenue from detailing one revenue agent for duty in his office. (Appendix, p. 432.)

[SEC. 3152 b.] [*Extract from legislative, executive, and judicial appropriation act approved March 3, 1885, (23 Stat., 404).*] * * * Provided further, That the compensation of the chief of the internal-revenue agents shall not exceed ten dollars per day, and of the other

Twenty additional agents.

agents not exceeding seven dollars per day each; and for per diem in lieu of subsistence, while traveling on duty, said agents shall receive at a rate to be fixed by the Secretary of the Treasury, not exceeding three dollars per day. * * *

[Extract from the legislative, executive, and judicial appropriation act for the year ending June 30, 1906, approved February 3, 1905 (33 Stat., 631, 652).]

Provided, That internal-revenue agents assigned to the duty of examining accounts of collectors of internal revenue shall receive for per diem in lieu of subsistence, when absent from their legal residences on duty, a sum, to be fixed by the Commissioner of Internal Revenue, approved by the Secretary of the Treasury, not to exceed four dollars.

Agents examining accounts.

Internal-revenue agents and inspectors are not entitled to compensation nor per diem in lieu of subsistence when sick; neither can they be allowed annual leave. (T. D. 1580.)

Salaries not to be paid until after close of the month. (T. D. 1202.)

SEC. 3153. [as amended by act of Aug. 15, 1876 (19 Stat., 152)]. There shall be appointed by the Secretary of the Treasury such number of internal revenue store-keepers as may be necessary, who shall each receive such compensation, not exceeding four dollars a day, to be paid monthly by the United States, as may be determined by the Commissioner of Internal Revenue. No store-keeper shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner of Internal Revenue. Every store-keeper shall take an oath faithfully to perform the duties of his office, and shall give a bond, to be approved by the Commissioner of Internal Revenue, for the faithful discharge of his duties, in such form and for such amount as the Commissioner may prescribe.

Storekeepers and their salaries.

Bonds of gaugers, storekeepers, and storekeeper-gaugers fixed at \$5,000, Rules, Circular 576, July 2, 1900 (T. D. 171).

To be renewed every four years. (T. D. 697.)

Storekeeper's bond. Form 50 revised.

Additional bonds. (T. D. 548.)

Bond.

[SEC. 3153 a.] Extract from legislative, executive, and judicial appropriation act approved August 15, 1876, (19 Stat., 152).] Hereafter no store-keeper shall receive a compensation greater than four dollars per day; and said gaugers and store-keepers respectively shall only receive compensation when rendering actual service.

Compensation limited.

Henry B. McNeil v. The United States. (35 Int. Rev. Rec., 15; 23 Ct. Cls., 413.)

That the Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, impose the duties of storekeeper and gauger upon one officer, where the amount of spirits produced at the distillery to which such officer may be assigned, is not sufficient in the judgment of the Commissioner to warrant the employment of two officers to perform the separate duties of storekeeper and gauger.

Office of "store-keeper and gauger."

compensation. The Secretary of the Treasury may issue a commission to such officer as storekeeper and gauger, but the compensation for his services as storekeeper and gauger shall be that of storekeeper only.

Bond. And the said officer shall before entering upon the discharge of such duties give a bond in the penal sum of not less than five thousand dollars for the faithful performance of the combined duties of storekeeper and gauger.

Storekeeper and gauger, as signment of. [SEC. 3153b.] [*Sec. 64, act of Aug. 28, 1894* (28 Stat., 509).] That the officer holding the combined office of storekeeper and gauger, under the provisions of the legislative, executive, and judicial appropriation act, approved August fifteenth, eighteen hundred and seventy-six (Nineteenth Statutes, page one hundred and fifty-two), may be assigned by the Commissioner of Internal Revenue to perform the separate duties of a storekeeper at any distillery, or at any general or special bonded warehouse, or to perform any of the duties of a gauger under the internal-revenue laws.

Bond. And the said officer, before entering upon the discharge of such separate duties, shall give a bond to be approved by the Commissioner of Internal Revenue for the faithful discharge of his duties in such form and for such amount as the Commissioner may prescribe.

Gaugers, storekeepers, and storekeeper-gaugers were covered into the classified civil service by Executive Order, May 6, 1896.

Storekeeper-gauger's bond. Form 50½ revised. (T. D. 1260.)

Under the old form of bond of a storekeeper-gauger, conditioned solely for the faithful discharge of his duties, recovery may be had only for damages actually sustained by the Government. Such bond did not cover fines and costs imposed in a criminal prosecution of such officer. April 12, 1909. (T. D. 1482.)

Compensation at small distilleries. [SEC. 3153c.] [*Extract from sec. 2 of the legislative, executive, and judicial appropriation act, approved June 21, 1879* (21 Stat., 23).] Hereafter storekeepers at distilleries that mash less than sixty bushels of grain per day shall be allowed not exceeding fifty dollars per month. But when one person acts as storekeeper and gauger, his salary shall not exceed four dollars per day for the time actually employed.

Storekeepers are not assigned to distilleries of this capacity, but storekeeper-gaugers are so assigned.

AN ACT To amend the provisions of the act of March third, eighteen hundred and eighty-five, limiting the compensation of storekeepers, gaugers, and storekeeper-gaugers in certain places to two dollars a day, and for other purposes, approved February 24, 1911. (36 Stat., 928)

Be it enacted, etc., That the provisions of the legislative, executive, and judicial appropriations Act for the fiscal year ending June thirtieth, eighteen hundred and eighty-six (Twenty-third Statutes, page four hundred and four), approved March third, eighteen hundred and eighty-five, which limits to two dollars per day the compensation of storekeepers, gaugers, and storekeeper-gaugers assigned to

distilleries whose registered capacity is twenty bushels or less, be, and the same is hereby, amended, so as to read as follows:

"Hereafter storekeepers, gaugers, and storekeeper-gaugers who are assigned to distilleries with a registered capacity of twenty bushels or less, or who are assigned to other places where the compensation is now less than three dollars a day, shall receive three dollars a day for services." (T. D. 1680.)

Compensation.

Storekeepers' and storekeeper-gaugers' monthly bills. Reg. No. 2, revised, p. 85.

Assignments of storekeepers and gaugers must be made by the Commissioner of Internal Revenue upon the recommendation of the collector. (Treas. Dec. (1899), No. 20695.)

Assignment of storekeeper-gaugers. Cir. No. 712. (T. D. 1280); Regulations No. 7, revised, page 43.

Transfer of storekeeper-gaugers. (T. D. 1331.)

[SEC. 3153d.] *That the internal-revenue officer holding the combined office of storekeeper and gauger shall hereafter be known and denominated as a storekeeper-gauger, and when performing the combined duties of storekeeper-gauger, or when assigned by the Commissioner of Internal Revenue to perform the duties of a storekeeper only at any distillery, or at any general or special bonded warehouse, he shall receive for his services the compensation of storekeeper only; but when assigned by the Commissioner of Internal Revenue to perform the duties of gauger only, under the internal-revenue laws, as provided by those laws, he shall receive only the compensation for his services and the traveling expenses which are allowed by law to United States gaugers.*

Act June 28, 1902. (32 Stat., 492.)

Act June 28, 1902. (32 Stat., 492.)

SEC. 3154. One or more storekeepers shall be assigned by the Commissioner of Internal Revenue to every bonded or distillery warehouse established by law; and any storekeeper may be transferred * * * by the Commissioner of Internal Revenue, from one warehouse to another.

Assignment and transfer of storekeepers.

Act Aug. 15, 1876.

In the original section power was given to supervisors of internal revenue to transfer storekeepers, but those offices (supervisors) were abolished by the act of August 15, 1876. (19 Stat., 143.)

Transfer of storekeepers. (Sec. 3163, p. 75.)

[SEC. 3154a.] [Sec. 63, act of Aug. 28, 1894 (28 Stat., 509), amended by act of May 13, 1910. (36 Stat., 369.)]

Compensation.

That storekeepers, storekeeper-gaugers, and gaugers, when traveling to or from assignments, or when transferred from one assignment to another, either in the same district or in different districts, shall receive the same compensation per day during the time necessarily occupied in traveling that they would be entitled to if on duty at the place to which assigned or transferred, or from which relieved, together with actual and necessary traveling expenses.

Compensation and traveling expenses of storekeepers, storekeeper-gaugers, and gaugers. (T. D. 1632.)

[Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1901, approved April 17, 1900 (31 Stat., 107).]

Accounts of gaugers, storekeeper-gaugers, and storekeepers detailed. *Provided further*, That the Commissioner of Internal Revenue is authorized to detail gaugers, storekeeper-gaugers, and storekeepers, appointed in one district for special or regular duty in other districts, and the accounts of gaugers, storekeeper-gaugers, and storekeepers so detailed shall be adjusted and paid in the district where they are appointed the same as if assigned to regular duty, without regard to the number of districts in which they may have been employed in any one month, the same as if all their services had been performed and expenses incurred in the district in which appointed, and the order of the Commissioner of Internal Revenue transferring gaugers, storekeeper-gaugers, or storekeepers to special work shall be accepted by the accounting officers of the Treasury Department as full authority for proper expenses incurred by said gaugers, storekeeper-gaugers, or storekeepers, while so assigned.

Temporary storekeeper. SEC. 3155. In case of the absence of any internal-revenue storekeeper by reason of sickness or other cause, the collector having control of the warehouse may designate a person to have temporary charge thereof, who shall, during such absence, perform the duties and receive the pay of the storekeeper for the time he may be so employed, and shall for any violation of the law be subject to the same punishment as storekeepers.

Storekeepers' duties. (Secs. 3267, 3271, 3273, 3274, 3287, 3295, 3301, 3302.)

Penalties prescribed in case of storekeepers. (Sec. 3300, p. 199.)

Concerning designations during temporary absence of storekeepers or storekeeper-gaugers. (Circular letter, Oct. 29, 1895; 41 Int. Rev. Rec., 445.) (Regulations No. 7, revised, p. 39.)

Gaugers.

SEC. 3156. The Secretary of the Treasury shall appoint in every collection district where they may be necessary, one or more internal-revenue gaugers, who shall each take an oath faithfully to perform his duties, and shall give bond, with one or more sureties, satisfactory to the Commissioner of Internal Revenue, for the faithful discharge of the duties assigned to him by law or regulations: and the penal sum of said bond shall not be less than five thousand dollars, and said bond shall be renewed or strengthened as the Commissioner of Internal Revenue may require. The duties of every such gauger shall be performed under the supervision and direction of the collector of the district to which he may be assigned, or of the collector in charge of exports at any port of entry to which he may be assigned.

Gauger's bond. Form 39 revised.

Compromise of gauger's bond. (Decision of Secretary Sherman, adverse; 23 Int. Rev. Rec. (1877), 139.)

New bonds can not be accepted from gaugers so as to release old bondsmen from responsibility. (30 Int. Rev. Rec. (1884), 197.)

The right of action on the bond prescribed by section 3156 is reserved to the Government, notwithstanding an indictment,

conviction, and sentence under section 3169, unless there is an averment of satisfaction of the latter. (*United States v. Cullerton*, 8 Biss., 166; 24 Int. Rev. Rec., 68.)

The offices of gauger, storekeeper, and storekeeper-gauger, where the compensation does not exceed \$3 per day, or shall not exceed in the aggregate \$500 per annum, are not subject to competitive examination or registration, but persons appointed to said offices are subject to an examination to be prescribed by the Secretary of the Treasury, and to be taken before appointment, when possible. (Circular No. 538, revised; 21397.)

For instructions as to the duties of gaugers, see Regulations, No. 11, revised, *Gaugers' Manual* (1906); *Gaugers' Weighing Manual* (1906); and Reg. No. 7, revised (1908).

[SEC. 3156a.] [*Sec. 65, act of Aug. 28, 1894 (28 Stat., 509.)*] That internal-revenue gaugers may be assigned to duty at distilleries, rectifying houses, or wherever gauging is required to be done, and transferred from one place of duty to another, by the Commissioner of Internal Revenue, in like manner as storekeepers and storekeepers and gaugers are now assigned and transferred.

Assignment
of gaugers.

Gaugers' returns. (Sec. 3291, p. 181.)

Penalties prescribed in case of gaugers. (Secs. 3290, 3292, p. 181.)

Gauging instruments to be prescribed by the Commissioner. (Sec. 3249, p. 149.)

Transfer of gaugers. (Sec. 3163 amended.)

SEC. 3157. Gaugers shall be entitled to receive such fees, to be determined by the quantity gauged, as may be prescribed by the Commissioner of Internal Revenue; and said fees, together with their actual and necessary traveling expenses, shall be verified by their oaths, and shall be paid by the United States monthly.

Gaugers' fees.

[SEC. 3157a.] [*Extract from the legislative, executive, and judicial appropriation act, approved June 19, 1878 (20 Stat., 178.)*] * * * And hereafter the compensation of gaugers shall not exceed five dollars per day while actually employed.

Compensation
of gaugers.

Compensation of gauger at winery. Sec. 3, act of June 7, 1906, page 233.

[SEC. 3157b.] [*Extract from legislative, executive, and judicial appropriation act of Aug. 15, 1876 (19 Stat., 143.)*] * * * gaugers * * * shall only receive compensation when rendering actual service.

[SEC. 3157c.] [*Act of July 7, 1898 (30 Stat., 656). Extract from the deficiency appropriation act, for the fiscal year ending June 30, 1898.*] Gaugers for special duty.

That gaugers employed in gauging fruit brandy, and gaugers specially detailed for special duty under the direction of the Commissioner of Internal Revenue, may be paid, at the discretion of the Commissioner of Internal Revenue, either by fees to be determined by the quantity gauged, or by a daily compensation not to exceed five dollars per diem while actually employed; and in calculating the daily compensation of all gaugers paid by fees, the quantity gauged for which fees are paid may be determined by dividing the aggregate gallons of spirits

Compensation.

Daily compen-
sation, how cal-
culated.

gauged by the number of days on which the gauger was actually employed during the month.

Gaugers' fees, Circular No. 205. Regulations, No. 2, revised, p. 88. Gauger's Manual (1906).

See T. D. 1632, May 20, 1910, as to compensation and traveling expenses.

False claims. (United States *v* Bittinger, 21 Int. Rev. Rec., 342.)

Section 3169, Revised Statutes (second paragraph), makes it an offense for a United States gauger to receive any compensation except as by law prescribed for the performance of his duty.

Rectifiers are entitled to have gaugers do their work promptly and accurately without any other pay than the pay received from the Government. Violation of law on the part of a United States gauger in receiving money from rectifiers for gauging spirits. (U. S. *v*. Brunjes, 36 Int. Rev. Rec., 47.)

A gauger's pay being fixed by a general regulation, his case comes within the prohibition of section 1765, and he can not receive pay for another service rendered at the same time. (Hedrick *v.* United States, 16 Ct. Cls., 88.)

Unofficial gauging for distillers and others (Reg. No. 2, revised, p. 92).

AN ACT Granting cumulative annual leave of absence to storekeepers, gaugers, and storekeeper-gaugers, with pay, approved June 23, 1910. (36 Stat., 592.)

Leave of absence.

[SEC. 3157d.] That storekeepers, gaugers, and storekeeper-gaugers shall be, and are hereby, granted a cumulative annual leave of absence, with pay, not to exceed in the aggregate fifteen days for any one year: Provided, That said leave of absence is so computed as not to exceed one and one-quarter days for each twenty-six days said storekeepers, gaugers, and storekeeper-gaugers are actually assigned to duty: Provided further, That such leave shall be operative under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

[Extract from legislative, executive, and judicial appropriation act for 1885, act of July 7, 1884 (23 Stat., 172).]

Officers in commission not to exceed fifteen per cent in excess of the number employed.

And no collector in any district shall recommend, nor shall there be appointed or commissioned, more deputy collectors, storekeepers, storekeepers and gaugers, gaugers, inspectors, or other officers, or allowed to remain in commission more of any of said officers, at any one time, than fifteen per cent in excess of the number engaged in performing duty at the time, and indispensably necessary for the performance of said duty.

See also legislative, executive, and judicial appropriation act for fiscal year ending June 30, 1886 (act of Mar. 3, 1885; 23 Stat., 404; Supp. R. S., vol. 1, p. 484; Commissioner's report, 1886, p. cxv).

Circular No. 310, limiting the number of relatives permitted to hold position in the Internal-Revenue Service in each district. (33 Int. Rev. Rec., 101.)

Statement
fee, etc.

[SEC. 3158. Every internal-revenue officer, whose payment, charges, salary, or compensation are composed, wholly or in part, of fees, commissions, allowances, or rewards, from whatever source derived, shall be required to

render to the Commissioner of Internal Revenue, under regulations to be approved by the Secretary of the Treasury, a statement under oath setting forth the entire amount of such fees, commissions, emoluments, or rewards of whatever nature, or from whatever source received, during the time for which said statement is rendered; and any false statement knowingly and willfully rendered under the requirements of this section, or regulations established in accordance therewith, shall be deemed willful perjury, and punished in the manner provided by law for the crime of perjury. And any neglect or omission to render such statement when required shall be punished by a fine of not less than *two* hundred dollars, nor more than five hundred dollars, in the discretion of the court.

Punishment for perjury. (Sec. 125, Criminal Code, appendix, p. 414.)

[SECS. 3159 and 3160.] [Repealed by legislative, executive, and judicial appropriation act of Aug. 15, 1876 (19 Stat., 143).] Office of supervisor abolished.

SEC. 3161. In any port of the United States where there is more than one collector of internal revenue, the Secretary of the Treasury may designate one of them to have charge of all matters relating to the exportation of articles subject to tax under the internal-revenue laws; and at any port where he may deem it necessary, there shall be appointed by him an officer to superintend all matters of exportation and drawback, under the direction of the collector. The compensation of the officers last named shall be prescribed by the Secretary of the Treasury, but shall not exceed, in any case, an annual rate of two thousand dollars, excepting at New York, where such compensation shall be at the annual rate of three thousand dollars. At any port where there is no superintendent of exports, all the duties and services required of such officers shall be performed by the collector of internal revenue designated to have charge of exportation. All the books, papers, and documents in the bureau of drawbacks in the respective ports, relating to the drawback of taxes paid under the internal-revenue law, shall be delivered to the collector of internal revenue in charge of exportation.

SEC. 3162. Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal-revenue laws.

See section 3165 in regard to general authority of collector to administer oaths.

SEC. 3163 [as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327).] Every collector within his collection district and every internal-revenue agent shall see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with,

Penalty.
Act Feb. 18,
1875. (18 Stat.,
319.)

Officers in
charge of ex-
portations and draw-
backs.

Collectors and
superintend-
ents of exports
may administer
oaths.

Duties of col-
lectors and in-
ternal-revenue
agents.

and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. And it shall be the duty of every collector and of every internal-revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same.

Certain officers may transfer certain officers. The Commissioner may also transfer any inspector, gauger, storekeeper, or storekeeper and gauger, from one distillery, or other place of duty, or from one collection district, to another.

Duty of collector to collect taxes. (Sec. 3183, p. 94.)

Injunction will not lie against an executive officer to prevent his performance of acts directed by law. (Opinion of Solicitor of Treasury in the case of Sidenburg & Co., 27 Int. Rev. Rec., 47.)

Proper course to be pursued by a disbursing officer of the United States who is enjoined by a State court from paying money. (Op. Atty. Gen., 25 Int. Rev. Rec., 53; 16 Op. Atty. Gen., 257.)

Courts will not interfere by injunction with the exercise by the executive officers of duties requiring judgment or discretion. Gaines v. Thompson, 7 Wall., 347; Litchfield v. Register and Receiver, 9 Wall., 575.)

As to injunctions against collectors. (See under sec. 3224, p. 120; also Haffin v. Mason, 15 Wall., 671; 17 Int. Rev. Rec., 118; 16 Op. Atty. Gen., 257; 25 Int. Rev. Rec., 53.)

Trespass will not lie against a collector for seizure unless the act was tortious or unauthorized. (Averill v. Smith, 17 Wall., 82; 17 Int. Rev. Rec., 171.)

Powers requiring judgment and discretion conferred upon executive officers must be exercised with reason. When clearly reasonable the courts will not interfere with officers acting under discretionary powers. When found to be clearly unreasonable such action will be held void. (Woolner v. Rennick, 170 Fed. Rep., 662, T. D., 1425.)

An officer or agent of the United States engaged in the performance of a duty arising under the laws and authority of the United States is not liable to a criminal prosecution in the courts of a State for acts done by him in his official capacity. (In re White, 81 Fed. Rep., 359.)

The collection by internal-revenue officers of a tax erroneously assessed does not constitute a tort. (Armour v. Roberts, 151 Fed. Rep., 816.)

Execution not to issue against officers in case of probable cause. (See 989, p. 398, Appendix.)

Certain powers under and in relation to collectors. [SEC. 3163a.] [Extract from legislative, executive, and judicial appropriation act, approved Aug. 15, 1876 (19 Stat., 152).] * * * The powers of transfer, and of suspension, of officers conferred upon supervisors by section thirty-one hundred and sixty-three of the Revised Statutes, are hereby vested in the Commissioner of Internal Revenue; and all other powers conferred, and duties imposed, by said section upon supervisors, are hereby conferred and imposed upon collectors of internal revenue within their respective districts. In case of the supervision [suspension] of a collector, under the power hereby conferred, the Commissioner of Internal Revenue

Certain powers to report to the Commissioner.

shall, as soon thereafter as practicable, report the case to the President through the Secretary of the Treasury for such action as he may deem proper. * * *

The powers and duties specified in section 3163, Revised Statutes, as that section was at the time of the above enactment of August 15, 1876, are as follows:

"SEC. 3163. Every supervisor, under the direction of the Commissioner, shall see that all laws and regulations relating to the collection of internal taxes, are faithfully executed and complied with; and shall aid in the prevention, detection, and punishment of any frauds in relation thereto, and examine into the efficiency and conduct of all officers of internal revenue; and for such purposes he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel a compliance with such summons in the same manner as collectors may do. He shall report in writing to the Commissioner of Internal Revenue any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. He may, by notice in writing, suspend from duty any inspector, gauger, or store-keeper, and he may suspend any collector for fraud, or gross neglect of duty, or abuse of power. In case of the suspension of any inspector, gauger, or storekeeper, he shall immediately notify the collector of the proper district and the Commissioner of Internal Revenue, and within three days thereafter report his action and his reasons therefor, in writing, to the Commissioner. In case of the suspension of any collector, he shall immediately report his action to the Commissioner, with his reasons therefor, in writing, and the Commissioner, in all cases of suspension, shall thereupon take such action as he may deem proper. Every supervisor may also transfer any inspector, gauger, or storekeeper from one distillery, or other place of duty, or from one collection district, to another."

Suspension of collector. (18 Op. Atty. Gen., 318.)

Charges against subordinate officers or employees by collectors or agents. (T. D., 56.)

The extent and limitation of the authority of supervisors to compel the production of books and papers under section 3163 were discussed in the decision rendered by Judge Treat, in the United States district court, district of Missouri, in the case wherein Frederick Becker refused to obey the order of Supervisor Meyer to produce certain books and papers, and wherein an attachment was asked by the supervisor to compel obedience to his subpoena. (21 Int. Rev. Rec., 243.)

Law not unconstitutional in giving these officers the right to examine books, etc. (Stanwood *v.* Green, 11 Int. Rev. Rec., 134.)

The authority given to the supervisor to enter without warrant and examine the premises of parties was valid as a civil proceeding, and not in conflict with the fourth amendment to the Constitution, nor was his authority to compel parties to attend and produce books and testify, in conflict with the fifth amendment to the Constitution. (In re Meadow & Brothers (1869), 10 Int. Rev. Rec., 74. See also Perry *v.* Newsome, 10 Int. Rev. Rec., 20; Stanwood *v.* Fordyce, 13 id., 77.)

SEC. 3164. It shall be the duty of every collector of internal revenue to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, and which

Duty of collectors to report violations of law to district attorney.

may come to his knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction; and if any collector shall in any case fail to report to the proper district attorney as prescribed in this section, his right to any compensation, benefit, or allowance in such case shall be forfeited to the United States, and the same may, in the discretion of the Secretary of the Treasury, be awarded to such persons as may make complaint and prosecute the same to judgment or conviction.

Section 838, Revised Statutes, provides that it is *the duty* of the district attorney to whom any collector of internal revenue shall report any case in which any fine, penalty, or forfeiture has been incurred for violation of the internal-revenue law, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures provided, unless, upon inquiry and examination, he shall decide that such proceedings can not properly be sustained, or that the ends of public justice do not require that proceedings should be instituted; in which case he shall report the facts to the Commissioner of Internal Revenue for his direction. (Appendix, p. 401.)

Under the provisions of section 3460, Revised Statutes, page 363, when any property (except real estate) seized by the collector for violation of internal-revenue laws does not exceed \$500 in value it should be proceeded against by the collector, instead of being reported to the district attorney, unless a bond for costs is given as provided. (See Regulations, No. 12, revised, p. 25; Reg. No. 2, revised, p. 46.)

Under existing law collectors receive no allowance from cases to be reported to United States attorneys.

Reports to United States attorneys of violations of the internal-revenue law should in all cases give sufficient data to enable them to form an opinion as to whether or not the public interests require prosecution. (T. D. 1597.)

Instructions to collectors and district attorneys relative to prosecution for violations of internal-revenue laws. (T. D. 1605.)

United States attorneys instructed to furnish copies of their reports on Form 112 to the collectors of the districts in all cases where the violation of law was not reported by the collector. (T. D. 1443.)

Violations of law to be promptly reported. (T. D. 176; July 12, 1900.)

Cases to be pursued by revenue agents and collectors in cases of technical violations of law, compromises, etc. (27 Int. Rev. Rec., 397.)

Circular letter to United States attorneys relative to unnecessary prosecutions. (T. D. 1336.)

Cases to be carefully examined before proceedings are instituted. (Regulations No. 12, p. 26.)

Duty of collectors to look after cases in suit. (T. D. 937.)

Prosecution not commenced before indictment. (Virginia v. Paul, 148 U. S. 107.)

Revenue act of 1879, as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 529). Every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

See also Sec. 3165, page 75.

Inspectors appointed under the denatured-alcohol act not authorized to administer oaths. (T. D. 1163.)

Deputy collectors have authority to administer oaths to sureties on distiller's bonds. (*U. S. v. Hardison*, 135 Fed. Rep., (1905.) 419.)

SEC. 183. Any officer or clerk of any of the Departments lawfully detailed to investigate frauds, or attempts to defraud, on the Government, or any irregularity or misconduct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.

The act imposing excise tax on corporations, act of August 5, 1909, page 325, authorizes revenue agents in certain cases to administer oaths.

SEC. 3166. Any officer of internal revenue may be specially authorized by the Commissioner of Internal Revenue to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify: *Provided*, That no collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector.

Seizure may be made by any unofficial person, but at the peril of responsibility in damages in case the seizure is not adopted by the Government and the property is not condemned. (13 Op. Atty. Gen., 253.)

A seizure implies an actual caption of the thing seized. (17 Op. Atty. Gen., 82.)

As to seizure of stocks see *Miller v. United States*. (11 Wall., 268.)

Where a lot of ale, within the brewery in which it was made, was seized under process emanating from a State court as a forfeiture to the State and is in the custody of the sheriff awaiting judgment of the court, possession of the sheriff can not be legally interfered with by internal-revenue or other officers of the United States. (15 Op. Atty. Gen., 370.)

See section 3453 in regard to seizures, page 359.

Revenue officers to cooperate with State officers in the suppression of certain violations of law. (T. D. 1327; Int. Rev. Circular No. 716.)

SEC. 3167 [as amended by sec. 34, act of Aug. 28, 1894 (28 Stat., 509).] That it shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employé of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor.

Revenue officers disclosing operations of manufacturers, etc.: penalty.

and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employé of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

This section applies to revenue agents. (Sec. 3152, p. 67.)
Furnishing statistical information to private persons. (34 Int. Rev. Rec., 117.)

Circular letter of August 18, 1897; information from official records. (43 Int. Rev. Rec., 318.)

Regulations prohibiting the giving out by collectors of records in their offices, or copies thereof, for purposes not contemplated by the internal-revenue laws. (Regulations No. 12, revised, pp. 45, 46; T. D. 18847, Jan. 21, 1898.)

Circular No. 583 (T. D. 226); Circular No. 651 (T. D. 727).

Circular No. 354 (36 Int. Rev. Rec., 397). Collectors may furnish for publication monthly statements of the aggregate receipts from sale of stamps for tobacco, snuff, cigars, and cigarettes, but any information that would disclose the business done by or the value of stamps issued to any individual manufacturer must be withheld. (T. D. 263.)

Copies of special tax returns can not be furnished for use in trial of persons indicted for violation of State laws. (T. D. 766.)

Data from returns made by distiller not to be furnished for use of private litigants. (T. D. 224.)

Instructions as to giving testimony in State courts: Revenue officers are prohibited from testifying in cases not arising under the laws of the United States as to facts that come to their knowledge in their official capacity. (T. D. 1218. Aug. 21, 1907.)

Instructions to collector as to obeying subpoena and producing records. (34 Int. Rev. Rec., 261.)

A collector of internal revenue refusing to testify or furnish copies of official papers, acting under instructions from Department. (Decision of Judge Evans, United States district court, district of Kentucky, discharging the collector; *in re David N. Comingore, collector* (1899), 96 Fed. Rep., 552; T. D., No. 21584; *Boske v. Comingore*, 177 U. S., 459; T. D. 104; *in re Lamberton*, 124 Fed. Rep., 446; T. D. 689; *Stegall v. Thurman*, 175 Fed. Rep., 813, T. D. 1616.) See section 882, page 391.

Collectors can send, in obedience to a subpoena *duces tecum* issued for the purpose of having in court certain documents or records, any clerk who can give the necessary testimony. (T. D. 1113.)

Officers not to be interested in certain manufactures; penalty.

Act Feb. 25, 1877 (7 Stat. 201, correcting verbal error.)

SEC. 3168. Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than five hundred dollars nor more than five thousand dollars.

See section 3152, page 67.

See sections 1, 88 and 1789, pages 412, as to prohibitions against officers in respect to certain kinds of business.

See section 244, page 436, as to certain business forbidden to clerks in Treasury Department.

Circular No. 456, May 5, 1896; Government officer not authorized to fill in or date blank requests of distillers for regauge.

Circular No. 46 should be construed as prohibiting internal-revenue officers from acting as agents for distillers in any capacity. (42 Int. Rev. Rec., 354.)

Circular No. 665, as to the prohibition of revenue officers acting as agents for the sale of books to distillers, brewers, and others, denounces the practice as detrimental to the public service and against the interests of the Government. (T. D. 831, Oct. 6, 1904.)

SEC. 3169. Every officer or agent appointed and acting under the authority of any revenue law of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or,

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or,

Third. Who willfully neglects to perform any of the duties enjoined on him by law; or,

Fourth. Who conspires or colludes with any other person to defraud the United States; or,

Fifth. Who makes opportunity for any person to defraud the United States; or,

Sixth. Who does or omits to do any act with intent to enable any other person to defraud the United States; or,

Seventh. Who negligently or designedly permits any violation of the law by any other person; or,

Eighth. Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or,

Ninth. Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner of Internal Revenue; or,

Tenth. Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do, shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One-half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court.

Officers of internal revenue
guilty of extor-
tion, receiving
unlawful fees,
and of other of-
fenses.

* Section 3152 makes this section applicable to internal-revenue agents.

Who are officers? (*United States v. Hartwell*, 6 Wall., 385; *United States v. Germaine*, 99 U. S., 508; 26 Op. Atty. Gen., 363; 27 ibid., 219.)

In *United States v. Mouat* (124 U. S., 303, 307), the court, following the decision in *United States v. Germaine* (99 U. S., 508), said that "under the Constitution of the United States all its officers were appointed by the President, by and with the consent of the Senate, or by a court of law or the head of a Department" (members of the Cabinet), and that unless so appointed they are not, "strictly speaking," officers of the United States.

Congress may use the word "officer" in a more popular sense and the courts in construing an act of Congress must ascertain its meaning. (*United States v. Hendee*, 124 U. S., 309.)

It would seem to be clear that the recognition in a Federal Statute of a person in the public employ as an officer of the United States constitutes the person such officer. 26 Op. Atty. Gen., 363.

Extortion is defined as "the unlawful taking by an officer, under color of his office, of any money or thing of value that is not due to him or more than his due, or before it is due." (4 Blacks. Com., 141. See also *United States v. Deaver*, 14 Fed. Rep., 595.)

Knowingly demanding greater sums than are authorized by law. (*United States v. Highleyman*, 22 Int. Rev. Rec., 138.)

United States v. Peter O. Brunjes. Violation of law on the part of a United States gauger in receiving money from a rectifier for gauging spirits. (36 Int. Rev. Rec., 47.)

Conspiracy. Officers who conspire with others to defraud the United States may be prosecuted under section 3169 or section 5440, now section 37 of the Criminal Code (act of Mar. 4, 1909, p. 418). Section 37 requires proof of some overt act which is not required under section 3169. (*Grunberg v. United States*, 145 Fed. Rep., 81.)

Indictment of storekeeper-gauger for negligently permitting a violation of law. Intent not necessarily an ingredient. (*Mason v. U. S.*, 162 Fed. Rep., 23; T. D., 1408.)

Officer of the United States guilty of extortion. (Sec. 85, act Mar. 4, 1909, Criminal Code, 35 Stat., 1088.)

Extortion by internal-revenue informers. (Sec. 145, act Mar. 4, 1909, p. 417.)

Bribery. (Secs. 5451, 5501, 39 and 117, act Mar. 4, 1909, pp. 416-417.)

Embezzlement. (Secs. 86, 87, 89, 90, 91, 93, 94. Act Mar. 4, 1909, 35 Stat., 1088, pp. 409-411.)

Penalty for failure to make reports. (Sec. 1780; superseded by sec. 101, Criminal Code, act Mar. 4, 1909, 35 Stat., 1088; Appendix, p. 412.)

False acknowledgements. (Sec. 31, act Mar. 4, 1909, Criminal Code, 35 Stat., 1091.)

Penalty for making false certificate, etc. (Sec. 106, act Mar. 4, 1909, Criminal Code, 35 Stat., 1107.)

No limitation of suits against officers. (See "Statute of Limitations," Appendix, p. 398.)

Officers forbidden to aid violators of internal-revenue laws in preparing statements or affidavits. (T. D. 1607.)

An officer of internal revenue, named as such in the indictment, can not be jointly indicted, for a conspiracy, to defraud the revenue, with private persons. (*United States v. McDonald*, 3 Dill., 543; Fed. Cas. No. 15,670.)

Two offenses constituting substantially one offense joined in the same indictment; a separate sentence rendered on the verdict of each count illegal. (*Ex parte Joyce*, 23 Int. Rev. Rec., 297; 13 Fed. Cas., 11,63, No. 75,56.)

Collector, etc. [Sec. 3169a.] [Sec. 1, act of Mar. 1, 1879 (20 Stat., 327).] *before payment,* [§] That any collector of internal revenue, or any deputy collector or other employee of, or person acting for, such

collector, who shall issue any stamp or stamps indicating the payment of any internal revenue tax, before payment in full therefor has been made to the officer or person issuing the same, shall be deemed guilty of a misdemeanor, and shall be fined for each stamp thus issued an amount equal to the face value thereof, in addition to the liability of the collector on his official bond on account of such stamp; and such collector, deputy collector, or employee shall be dismissed from office.

Penalty.

Issuing stamps for distilled spirits to any other person than as provided by law. (Sec. 3316, p. 209.)

Receipt in lieu of stamp prohibited. (Sec. 3183, p. 94.)

[SEC. 3169b.] [See. 23, act of Feb. 8, 1875 (18 Stat., 307).] That all acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal-revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed, or acting under the authority of any internal-revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money.

Application of laws imposing punishment on internal-revenue officers to certain other classes of persons.

SEC. 3170. Every district attorney or marshal who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money or other property of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of any provision of the internal-revenue laws, except as expressly authorized by law to do so, shall be held to be guilty of a misdemeanor, and shall be fined in double the sum or value of the money or property received or demanded, and be imprisoned for not less than one nor more than ten years.

District attorney or marshal accepting or demanding anything for compromise of violation of internal-revenue laws.

Accepting illegal fees, etc. (Sec. 18, act of May 28, 1896, 29 Stat., 140.)

SEC. 3171 [*as amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327).*] If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, *in the discharge of his duty*, under any law of the United States for the collection of taxes, he shall be entitled to maintain suit for damage therefor, in the circuit court of the United States, in the district wherein the party doing the injury may reside or shall be found.

Officers suffering injuries may maintain suit for damages.

U. S. v. Patrick, 54 Fed. Rep., 338.

Penalties for obstructing officers. (Sects. 3177, p. 90; 3276, p. 170; secs. 65 and 140, Criminal Code, act Mar. 4, 1909, 35 Stat., 1088, pp. 415, 416.)

For rescuing prisoners or property. (Sec. 3177, p. 90; secs. 71 and 143, act Mar. 4, 1909, p. 415.)

Conspiracy to prevent persons from accepting office. (Sec. 5518; sec. 21, act Mar. 4, 1909, p. 417.)

Penalty for falsely assuming to be an officer. (Sec. 5448, act of Apr. 18, 1884; reproduced in sec. 32, Criminal Code, act Mar. 4, 1909; 35 Stat., 1088, p. 416.)

Reimbursement for medical attendance, surgeon's and hospital bills made necessary by injuries received in line of duty, and for horses crippled or killed. (Act June 17, 1910, 36 Stat., 494, p. 54.)

CHAPTER TWO.

OF ASSESSMENTS AND COLLECTIONS.

Sec.	Sec.
3172. Canvass of districts for objects of taxation.	3201. Redemption prior to sale.
3173 (amended). Returns of persons liable to tax.	3202. Redemption after sale.
3174. Summons.	3203 (amended). Record of sales.
3175. Failure to obey summons; proceedings.	3204. Redemptions to be entered on record.
3176 (amended). When collector may enter premises and make returns. One hundred per cent penalty; 50 per cent penalty.	3205. Successive seizures may be made, when.
3177. Officers may enter premises where taxable articles are kept. Obstructing officers; penalty.	3206. Fees and charges in seizure cases.
3178. (Obsolete.)	3207. Proceedings in chancery to subject real estate to payment of tax.
3179. Making false returns, or failing to obey summons; penalty.	3208 (amended). Commissioner to have charge of real estate acquired under internal-revenue laws.
3180. Taxable property owned by non-residents.	3209. When list to be sent to district where the party taxed resides or has property.
3181. Lists or returns.	3210. Collections to be paid into Treasury daily.
3182. Commissioner to make assessments; correction of incomplete or imperfect lists within 15 months.	3211. Depositories.
3183 (amended). Duty of collectors to collect taxes; not to issue receipts in lieu of stamps.	Act of March 2, 1911. Certified checks receivable for taxes.
[3183a] (act of August 28, 1894). Receipts to be given upon payment of tax; separate receipts to be given in certain cases.	3212. Collectors' monthly statement; accounts.
3184. Notice and demand of taxes.	3213. Suits for fines, penalties, forfeitures, and taxes.
3185. Returns; when tax payable; 5 per cent penalty and interest.	3214. Suits for taxes, etc., not to be brought without sanction of Commissioner.
3186 (amended). Lien for taxes.	3215. Regulations for government of district attorneys, marshals, etc.
3187. Distraint.	3216. Moneys recovered to be paid to collectors.
3188. Mode of levying distraint.	3217. Delinquent collectors; proceedings by distraint.
3189. Delinquents must exhibit evidence relating to property distrained.	3218. Collectors to be charged with what; due diligence.
3190. Proceedings on distraint.	3219. Death, etc., of collector; uncollected balances.
3191. When property sold under distraint is subject to tax, and tax not paid.	3220. Remission and refunding of taxes, penalties, etc.
3192. When property sold under distraint may be purchased for United States, etc.	3221 (amended). Taxes on spirits accidentally destroyed.
3193. Property distrained to be restored on payment before sale.	3222. Retrospective effect of preceding section.
3194. Effect of certificate of sale.	3223 (amended). When tax on lost spirits is indemnified by insurance.
3195. When property distrained is not divisible.	3224. Suits to restrain assessment or collection of taxes prohibited.
3196. When real estate may be sold to satisfy taxes.	3225. Suits to recover taxes collected under second assessment; burden of proof as to fraud, etc.
3197 (amended). Proceedings for seizure and sale of real estate.	3226. Suits for recovery of taxes wrongfully collected.
[3197a.] Regulating the manner in which personal or real property may be sold under orders and decrees of sale.	3227. Limitation of suits for recovery of taxes wrongfully collected.
3198. Certificate of purchase; deed.	3228. Claims for refunding; limitation.
3199. Collector's deed prima facie evidence, etc.	3229. Compromises.
3200. Collector may seize lands of delinquent in any district of same State.	3230. Discontinuances of certain prosecutions.
	3231. Continuances of cases.

Canvass of districts for objects of taxation.

SEC. 3172 [as amended by sec. 34, act of Aug. 28, 1894 (28 Stat., 509)]. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay *any internal revenue tax*, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

The list referred to should be on Form 24 and should contain nothing but taxes which should be reported for assessment. The report of the deputy should be made so as to reach the collector on or before the 5th day of the month succeeding that for which the report is made.—Regulations No. 1, revised, page 9.

Instructions to collectors with reference to special-tax returns, Circular No. 561, June 18, 1907; T. D. 92.

For methods employed in ascertaining names of persons liable to pay special taxes as rectifiers, wholesale liquor dealers, and retail liquor dealers, see 22 Int. Rev. Rec., 109; 24 ibid., 241; 26 ibid., 193; 29 ibid., 409.

SEC. 3173 [as amended by sec. 34, act of Aug. 28, 1894 (28 Stat., 509)]. That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special

Annual and other returns, when to be made, See Sec. 3185, R. S., p. 96.

tax, on or before the thirty-first day of July in each year, (in case of income tax on or before the first Monday of March in each year), and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the

person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

The words, "in case of income tax on or before the first Monday of March in each year," have no application at present, as they relate to the income tax which was imposed by the act of August 28, 1894, and declared unconstitutional. See page 26.

Returns of taxes assessable under internal-revenue laws to be made in duplicate. (Cir. No. 140, Int. Rev. No. 548; T. D. 21801, 1899.)

The returns (Form 11, revised) of special taxpayers must be made under oath or affirmation, whether covering the whole year or a fractional part of the year. (26 Int. Rev. Rec., 89; Ibid., 69.)

A person intending to engage in business for which special tax is required must himself sign and swear to the return (Form 11). The return will not be accepted when signed and sworn to by some other person as "agent." (T. D. 49, Feb. 27, 1900.)

The return authorized to be made by the collector or deputy refers to the return on the prescribed form. (Reg. No. 1 revised, p. 99.)

Return on Form 11 in the case of an unincorporated club, association, or copartnership may be signed and verified by a responsible or managing officer or member of the firm. (T. D. 1552.)

Proceedings in
case of absence.

Cases of neglect
or of making false
returns.

Summons to
produce books
and testify.

A written request by a person liable to a special tax for information concerning such tax is not a disclosure of the particulars within the meaning of this section. (VI Comp. Dec., 760.)

Request for prescribed blanks for making return is a disclosure. (VIII Comp. Dec., 663.)

This section clothes collectors of internal revenue with supervisory power over and authorizes them to investigate all accounts, lists, or returns made or required to be made to them by any and all classes of persons liable to pay taxes upon any property, trade, or business. (United States *v.* Hodson, 14 Int. Rev. Rec., 100.)

The collector is not authorized to require the production of the books of a corporation in which the taxpayer is a shareholder, such books in the meaning of that provision not being books relating to the trade or business of the shareholder. (Lee, assessor, *v.* Chadwick, 11 Int. Rev. Rec., 133; 1 Lowell, 439.)

After the right of assessment has been lost a collector has no legal authority to require the production of a person's private books and papers for the purpose of ascertaining his liability to tax. (In the matter of O. H. P. Archer, 24 Int. Rev. Rec., 110; 9 Ben., 427.)

It was held that it is no defense that the answers of the person summoned would tend to criminate him. (In re Phillips, 10 Int. Rev. Rec., 107.)

The examination of books under this section is not an infringement of the Constitution. (In re Strouse, 11 Int. Rev. Rec., 182; 1 Sawyer, 605.)

Summons to produce books and attachment by court for refusal. (Lippman's case, 3 Ben., 95; 9 Int. Rev. Rec., 1; Landram *v.* United States, 16 Ct. Cls., 74, 85; in re Brown, 3 Int. Rev. Rec., 134; in re Kearns, 64 Fed. Rep., 481.)

Meaning of the words "objects charged with internal-revenue tax." (Wells, Fargo and Co. *v.* Shook, 8 Blatch., 254; Fed. Cas. No. 17406; in re Kinney, 102 Fed. Rep., 468.)

The decision in Boyd *v.* The United States (116 U. S., 617; 32 Int. Rev. Rec., 62) was, in effect, that a compulsory production of a man's private papers, to be used as evidence against him in a proceeding to forfeit his property for alleged fraud against the revenue laws, is an "unreasonable search and seizure" within the meaning of the fourth amendment of the Constitution.

That decision relates to criminal proceedings, and does not apply to proceedings to recover taxes.

See act of June 22, 1874, relative to production of books, papers, etc., in suits other than criminal, page 390, Appendix.

Summons of SEC. 3174. Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

In re Becker, Fed. Cas., No. 1208. (21 Int. Rev. Rec., 243.)

SEC. 3175. Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatory,

tories as required, the collectors may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

Penalty for failure to obey summons. (Sec. 3179, p. 91.)

The judge may issue a rule to show cause why an attachment should not issue. The application of the collector in these cases is a proceeding in a civil cause, and may be amended. (Lee, assessor, *v.* Chadwick, 11 Int. Rev. Rec., 133.)

In the matter of Oliver H. P. Archer, Judge Blatchford denied a collector's application for a writ of attachment, as the commissioner was barred by the 15 months' limitation in section 3182 from assessing. (24 Int. Rev. Rec., 110; 9 Ben., 427.)

SEC. 3176 [as amended by sec. 34, act of Aug. 28, 1894 where no return is made.] When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector

One hundred per cent penalty.

Fifty per cent penalty.

Penalties; when collectible.

shall be held *prima facie* good and sufficient for all legal purposes.

The 100 per centum to be added to the tax to be assessed applies to that tax not disclosed by the taxpayer in his return. (Cir. 543, Aug. 12, 1899. T. D. No. 21517.)

No penalty accrues where parties consent to disclose their liability to special tax within the calendar month. (T. D. 239, Nov. 3, 1900; 6 Comp. Dec., 686.)

The absence contemplated by section 3176 as relieving a special-tax payer from the 50 per cent additional is temporary, not continuous, absence. (T. D. 891, Apr. 22, 1905.)

See Circular 701, T. D. 1181, June 17, 1907, for table of 50 per cent penalties where fractions of a cent are involved, p. 36.

If a person is sick or absent during the whole calendar month in which he commences or continues business, or that part thereof elapsing from the time he commences business to the end of the month, he may make his return (Form 11) at any time within 30 days after the close of such month without incurring the 50 per cent penalty, provided the collector, after being satisfied of such continued sickness or absence, excuses him from making the return for such period as is necessary, not exceeding 30 days. (Reg. No. 1 revised, p. 99.)

As to the term "false," meaning willfully false (German Savings Bank v. Archbold, 15 Blatch., 398, 24 Int. Rev. Rec., 414); Supreme Court Decision (28 Int. Rev. Rec., 175; 104 U. S. (14 Otto), 708). The court did not hold that the return must be willfully false, but intimated that such would have been its decision if it had been necessary to pass upon the question in the case decided.

As to 100 per cent penal duty. (11 Op. Atty. Gen., 280.)

In case of neglect or refusal to make returns, in case of false or fraudulent ones, and in case of returns in which there is any omission or understatement, collectors will proceed as provided in section 3176. (34 Int. Rev. Rec., 93.)

The act which imposes an addition of 100 per cent to the tax as a penalty for the "return of a false or fraudulent list or valuation" is constitutional. (Doll v. Evans, 15 Int. Rev. Rec., 143.)

As to authority of Secretary to remit the 50 per cent addition. (17 Op. Atty. Gen., 433; 23 ibid., 398.)

Concerning assessable penalties of 50 per cent and 100 per cent. (Circular No. 543, Aug. 12, 1899; T. D. 21517 and T. D. 21536, 1899.)

Reporting delinquent special-tax payers for assessment. (See note under Sec. 3238, p. 128.)

Course to be pursued by collectors where no return is filed. (T. D. 1560.)

Officers in a y
enter premises
where taxable ar-
ticles are kept.

SEC. 3177. Any collector, deputy collector, or inspector may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector, in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to

Obstructing of-
ficers. Rescuing
property. Pen-
alty.

be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

This section is made applicable to revenue agents by section 3152 as amended (p. 67).

Seized property irrepleviable. (Sec. 934, p. 399.)

Whosoever shall forcibly assault, resist, or interfere with any officer of internal revenue, or his deputy, or any person assisting him in his duties, or shall rescue, or attempt to rescue, or cause to be rescued, property seized, is liable to a fine of not more than \$2,000, or imprisonment, or both. (Sec. 65, Criminal Code, Appendix, p. 415.)

Distiller or person in his employ obstructing officer. (Sec. 3276, p. 170.) Wholesale liquor dealer or rectifier hindering revenue officer from examining book. (Sec. 3318, p. 211.)

Search warrants. (Sec. 3462, p. 365.)

The right conferred by section 3177 is limited to the purpose described. (*United States v. Mann*, 95 U. S. (5 Otto), 580; 24 Int. Rev. Rec., 20.)

Officers must have free and peaceable egress as well as ingress to the places where they are authorized to make examination, and the proprietors have no right to eject them. (*United States v. Moseley*, 15 Int. Rev. Rec., 8.)

The authority of such officers to make examinations can not be delegated to their clerks. (*United States v. Rhawn*, 22 Int. Rev. Rec., 235.)

Indictments under this section. (*United States v. Ford*, 34 Fed. Rep., 26.)

United States v. Fears (3 Woods, 510; Fed. Cas. No. 15080). (Indictment defective in not showing the authority under which the officer was acting.)

SEC. 3178 [requires returns to show whether amounts are valued in coin or currency.]

Although the provision is not expressly repealed, it has been obsolete since the resumption of specie payments, January 1, 1879.

SEC. 3179. Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or, being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

United States v. McGinnis and Mountjoy (1 Abb. U. S., 120; 3 Int. Rev. Rec., 159.)

SEC. 3180. Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his

Making false return or neg-
lecting to obey summons; pen-
alty.

Taxable prop-
erty owned by
nonresidents.

deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes.

Lists when taken and how denominated.

Act Feb. 18, 1875.

SEC. 3181. The lists or returns aforesaid shall, where not otherwise especially provided for, be taken with reference to the day fixed for that purpose by this Title as aforesaid; and where duties accrue at other and different times, the *list* shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns.

There is now no annual list. There has been no list denominated annual since the act abolishing assessors and requiring special taxes to be paid by stamps. (Act Dec. 24, 1872, 17 Stat., 401.) Regular and Corporation-tax lists. (T.D. 1639.) See instructions on Assessment List of Corporations (Special Form 23).

Commissioner to make assessments. Corrections of incomplete or imperfect lists within fifteen months.

SEC. 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any former internal-revenue act, where such taxes had not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector, is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed.

Assessors abolished. (Act Dec. 24, 1872, 17 Stat., 401.) April 1st, 1873, was the last list made by assessors. (Special No. 128.)

The authority to make assessments of taxes due is limited to the 15 months next succeeding the delivery to the collector of the list upon which the assessment might have been made, but from which it was omitted, except in cases where it is otherwise provided. (Regulations, No. 1, revised, p. 6.)

Assessment can not be made of part of a special-tax liability. When the list on which a special tax should have first been assessed (but from which the same was omitted) has been delivered to a collector for a period of more than 15 months, the special tax incurred becomes unassessable. (T. D. 1364, May 26, 1908.)

Reassessment within 15 months. (*Dandelet v. Smith*, 18 Wall., 642; *Barker v. White*, 19 Int. Rev. Rec., 117; 11 Blatch., 445; *Daniels v. Tarbox*, 9 Blatch., 176; *Bergdoll v. Pollock*, 95 U. S., 337; U. S. v. O'Neil, 30 Int. Rev. Rec., 127; 19 Fed. Rep., 567.)

Commissioner to make assessments of taxes and penalties (sec. 3176, p. 89); of taxes on property sold under restraint (sec. 3191, p. 99); on spirits removed without deposit in warehouse (sec. 3253, p. 155); on spirits in case of excessive loss (sec. 3293 as amended, p. 181); on distillers for deficiency, etc. (sec. 3309, p. 202); on distillers in case of failure concerning spirits removed for deposit in a general bonded warehouse (sec. 58, act Aug. 28, 1894, p. 191); for export stamps issued (sec. 3314, p. 208); on tobacco, snuff, and cigars removed without being stamped (sec. 3371, p. 268); of stamps taxes within two years (sec. 3437, p. 337); on fruit brandy removed without compliance with law (act Mar. 3, 1877, p. 194); on oleomargarine removed without being stamped (act Aug. 2, 1886, p. 296); on playing cards removed without being stamped (sec. 47, act Aug. 28, 1894, p. 347); on filled cheese removed without being stamped (sec. 10, act June 6, 1896, p. 307); tax on mixed flour removed without payment of tax (sec. 41, act June 13, 1898, p. 312); tax on corporations, special excise tax (sec. 38, act Aug. 5, 1909, p. 325).

As to when an assessment is conclusive. (United States v. Black, 11 Blatch., 538; 19 Int. Rev. Rec., 116. United States v. Hodson et al., 14 Int. Rev. Rec., 100.)

Legal effect of assessments as evidence. Letter of Commissioner Raum reviewing the decisions on the subject. (23 Int. Rev. Rec., 5.)

The assessment is *prima facie* evidence of the amount due. (U. S. v. Rindskopf, 105 U. S., 418; 28 Int. Rev. Rec., 141. *Clinkenbeard v. United States*, 21 Wall., 65; 21 Int. Rev. Rec., 37. United States v. Cole, 134 Fed. Rep., 697; T. D. 786. United States v. Black, 11 Blatch., 538; Fed. Cas. No. 14600; 19 Int. Rev. Rec., 116. United States v. Hodson, 14 Int. Rev. Rec., 100; Fed. Cas. No. 15376. *Schmitt v. Trowbridge*, 24 Int. Rev. Rec., 381; Fed. Cas. No. 12468. United States v. Butler, 18 Int. Rev. Rec., 164; Fed. Cas. No. 14702. Charge to the jury in *Brown v. Harkins*. T. D. 662. *Western Express Co. v. U. S.*, 141 Fed. Rep., 28; T. D. 965.)

Obligation to pay tax does not depend upon an assessment. (*Dollar Savings Bank v. United States*, 19 Wall., 227; 19 Int. Rev. Rec., 89; 22 Id., 310. *King v. United States*, 99 U. S., 229. United States v. Tilden, 9 Benedict, 368; 24 Int. Rev. Rec., 99. United States v. Little Miami Railroad, 26 Ibid., 101; 1 Fed. Rep., 700.)

An assessment no bar to a suit for an amount due over and above the amount assessed and paid. (United States v. Hazard, 22 Int. Rev. Rec., 309; United States v. Ti'den, 24 Ibid., 99.)

The papers upon which an assessment is made are privileged, and courts have no authority to require their production. (16 Op. Atty. Gen., 24; 24 Int. Rev. Rec., 178.) See notes under section 882 Appendix, page 391.

The assessment, though made after the owner of the distillery, who had consented in writing that the premises should be used as a distillery and that the taxes and penalty should be a first lien on the premises (see sec. 3262, p. 162), had sold it to another party,

was held to be valid and could not be attacked collaterally, and the sale under distraint was valid. (United States circuit court, northern district Illinois, Freysinger case; Milan Distilling Co. v. Tillson, collector, 26 Int. Rev. Rec., 5.)

If the assessment is illegal, all proceedings under it are void and may be attacked collaterally. (Runkle v. Citizens' Insurance Co., United States circuit court, southern district of Ohio; 28 Int. Rev. Rec., 74; 6 Fed. Rep., 143.)

Receipts of the collector on Form 23½ for the alphabetical list showing taxes due are competent evidence. (United States v. Hunt, 105 U. S. (15 Otto), 183; 28 Int. Rev. Rec., 134.)

Allegations in a bill that an assessment is irregular and void do not constitute any ground for an injunction to restrain collection of the assessment. (Alkan and Swenger v. Bean, collector, 23 Int. Rev. Rec., 351.) See notes under section 3224, page 120.

Resort may be had to the instructions of the Internal Revenue Office in regard to the preparation of assessment lists to show the meaning of the abbreviations in those lists. (Snyder v. Marks, 109 U. S., 189; 29 Int. Rev. Rec., 403.)

Assessments based on estimates are legal. (U. S. v. U. S. Fidelity & Guaranty Co., 144 Fed. Rep., 886; T. D. 975.)

The authority confided to the assessor in making assessments is in its nature judicial, and not ministerial. (U. S. v. Hodson, Fed. Cas. 15376; 14 Int. Rev. Rec., 100.)

In making an assessment officers act in a quasi-judicial capacity. The presumption is that they proceed regularly. (Western Express Co. v. United States, 1905 (C. C. A.), 141 Fed. Rep., 28; T. D. 965.)

Assessments.—Taxpayers to be notified in case of doubtful liability. (T. D. 1275.)

Character of evidence to be submitted by revenue agents when reporting persons for assessment. (T. D. 1407.)

Revenue agents when they recommend assessments should state sufficient facts to sustain the charge. (T. D. 250.)

The fact that, for the time being, a tax is not collectible because the party liable has removed to foreign territory, or is insolvent, is not sufficient in itself to warrant omission of the assessment. (T. D. 1553, Oct. 25, 1909.)

Circular letter (No. 4), March 27, 1874, course to be taken to recover taxes due, but unassessable (without waiver).

Internal-revenue circular, No. 567, instructs collectors as to course to be taken to recover taxes due, but unassessable (without waiver) because of the 15 months' limitation. (T. D. 111, Apr. 25, 1900.)

For instructions relative to assessment of taxes on distilled spirits overdue under provisions of section 3293, see notes under that section, and on assessments generally, see Regulations, No. 1, revised.

Duty of collectors to collect taxes.

SEC. 3183 [as amended by sec. 3, act of Mar. 1, 1879 (20 Stat., 327)]. It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

Not to issue receipts in lieu of stamp.

It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

Circular 595 Mar. 11, 1901 (T. D. 297), contains instructions to collectors relative to the unlawful issue of receipts for money in payment of special taxes.

Collectors are advised that it is their duty to use the same diligence to collect a tax after it has been abated as uncollectible, or as in suit, as before abatement. (T. D. 60, Mar. 6, 1900.)

Protection afforded a collector in collecting an assessment. (*Erskine v. Hohnbach*, 14 Wall., 613; 17 Int. Rev. Rec., 19. *Haffin v. Mason*, 15 Wall., 671; 17 Int. Rev. Rec., 118. *Harding v. Woodcock*, 137 U. S., 43.)

Where an assessment is made, it is the collector's duty ordinarily to proceed with the collection of the tax without questioning the legality of the same. (T. D. 621; Jan 20, 1903.)

The collector has no authority to question the validity of assessments. The assessment lists constitute his warrant to collect. (*Haffin v. Mason*, 15 Wall., 675; 17 Int. Rev. Rec., 118.)

[SEC. 3183a.] *Section 37, act of August 28, 1894* (28 Stat., 509). That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this Act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

Receipts to be given upon payment of tax.

Separate receipts to be given in certain cases.

Collector issuing stamps before payment. (Sec. 3169a, p. 82.)

Collections to be paid into Treasury daily. (Sec. 3210, p. 107.)

Case of Pinkney Rollins, collector, taking sight drafts. (23 Int. Rev. Rec., 6.)

As to rendering accounts. (Sec. 3212, p. 109, and sec. 3622, p. 406.)

SEC. 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

Notice and demand of taxes.

Five per cent penalty and interest.

Interest for full time will be collected on an assessment the abatement for which has been applied for and rejected; that is,

time consumed in considering the claim must be included. But in the case of the 5 per cent penalty such time may be thrown out, provided 10 days do not elapse before claim is made or before payment after rejection. (Regulations, No. 1, revised, p. 110; T. D. 1414.)

Sections 3184 and 3185 strictly construed. (United States v. Allen, 14 Fed. Rep., 263.)

Notice necessary before taxpayer can be charged with penalty and interest. (United States v. Bristow, 20 Fed. Rep., 378.)

Directions to enforce 5 per cent penalty and interest. (Aug. 15, 1871; 14 Int. Rev. Rec., 58.)

Where 50 per cent penalty has been added to the special tax under Sec. 3176, R. S., the 5 per cent penalty and interest must be reckoned on the entire assessment including both the tax and 50 per cent penalty (T. D. 870, Feb. 27, 1905).

Five per cent penalty and interest on delayed payments of assessed taxes.—Assessed taxes held to be due and payable 10 days after actual mailing of Notice and Demand, Form 17. (T. D. 1659.)

Returns, when to be made, and when tax payable.

SEC. 3185. All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided*, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand

Five per cent payment thereof, with five per centum added thereto, penalty and interest at the rate of one per centum per month, as of 1 per cent per aforesaid, in the manner prescribed by law; and if said month,

tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

Instructions to collectors in regard to notices to taxpayers; Circular No. 311 (33 Int. Rev. Rec., 109; included in Regulations No. 2, Revised p. 39).

No power to remit penalty and interest if legally incurred. (9 Int. Rev. Rec., 188; 14 ibid., 58.)

If spirits are exported without payment of tax after it has been assessed, the distiller is not relieved from the 5 per cent penalty. (Clay & Co. v. Swope, collector, 38 Fed. Rep., 396; 35 Int. Rev. Rec., 136.)

Interest at the rate of 1 per cent per month is recoverable as interest and not as penalty. (*United States v. Guest* (1906) 143 Fed. Rep., 456; T. D. 979.)

Relative to 5 per cent penalty and interest at 1 per cent per month when claims for abatement have been filed and rejected—See first note under Sec. 3184.

SEC. 3186 [*as amended by sec. 3, act of Mar. 1, 1879 (20 Stat., 327.)*] If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment-list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person.

Lien for taxes.

Because of the special provision for a lien for the tax upon spirits (sec. 3251, p. 150) there is rarely occasion for calling in the provisions of section 3186 in the case of taxes on spirits.

Lien in case of deficiency when spirits are withdrawn for exportation. (See 16 Op. Atty. Gen., 634; 25 Int. Rev. Rec., 342.)

In order to support and enforce a statutory lien for taxes, all the prerequisites of the law granting the lien must be strictly complied with. (*United States v. Allen*, 14 Fed. Rep., 263.)

A lien for taxes does not stand upon the footing of an ordinary incumbrance, and is not displaced by a sale under a preexisting judgment or decree, unless otherwise directed by statute. It attaches to the res without regard to individual ownership, and when it is enforced by sale pursuant to the statute prescribing the mode of assessing and collecting them, the purchaser takes a valid and unimpeachable title. (*Osterberg v. Union Trust Co.*, 93 U. S. (3 Otto), 424; 23 Int. Rev. Rec., 146.)

The Pacific Railroad Co. appeared not to have paid all taxes due on dividends. It was succeeded by the Atlantic and Pacific Railroad. Demand was made by the collector of the first district of Missouri on the Atlantic and Pacific Railroad. Held that the demand did not create a lien in favor of the United States. Demand must be for specific amount. All the steps required by law must be pursued strictly. (Decision by Judge Miller, 23 Int. Rev. Rec., 384.)

A lien for taxes created by the act takes effect only upon property belonging to the delinquent at the time the demand for the payment of the tax is made. The lien requires an assessment, a notice that the tax is due, and a specific demand upon the individual taxpayer. There is a distinction between the liability of a taxpayer under the common law and the creation and enforcement of a lien. (Decision of Circuit Judge McCrary, *United States v. Pacific Railroad et al.*, 26 Int. Rev. Rec., 100; 1 McCrary, 1; 1 Fed. Rep., 97; *Brown v. Goodwin*, 75 N. Y., 409.)

See on this section *United States v. Snyder* (149 U. S., 210; 39 Int. Rev. Rec., 189).

SEC. 3187. If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distress and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as

Taxes collectible by distraint.

Property exempt from distraint. *Provided*, That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market-value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Collectors in accepting sureties on bonds will be careful to see that no portion of the property described in the surety's affidavit is exempt from distraint under this section or under the laws of the State in which the surety resides.

State exemption laws do not apply to distraint under this section. (To Collector Wheeler, Dec. 12, 1884.)

State exemption laws inapplicable to debts due the United States. (United States *v.* Howell, 9 Fed. Rep., 674.)

A sale of property under a distraint warrant is clearly distinguishable from a sale of property seized and condemned in forfeiture proceedings. A sale under a distraint warrant does not cut off the title of a third person who does not owe the tax. (Sheridan *v.* Allen et al., 153 Fed. Rep., 568.)

The issuance of "Omnibus" warrants of distraint is prohibited. Distraint warrants should be separate, and prompt returns should be made by deputies in every case, in pursuance of directions from collectors. (T. D. 135, May 28, 1900.)

Only persons who are the heads of families are entitled to exemptions.—Merchants not entitled to exemption as persons engaged in a trade or profession. (T. D. 1499.)

Taxes can be collected by distraint and by suit on the bond at the same time. (Harding *v.* Woodcock, 137 U. S., 43; United States *v.* Barrowcliff, 3 Ben., 519, Fed. Cas., No. 14528.)

Procedure when property is in hands of receiver. (T. D. 667.)

Mode of levying distraint.

SEC. 3188. In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

Delinquents must exhibit evidence relating to property distrained. **SEC. 3189.** All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any

property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid.

SEC. 3190. When distressment is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distressment, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distressment is made, if a newspaper is published in said county, or to be publicly posted at the post-office, if there be one within five miles, nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distressment. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days.

Collectors enjoined against unnecessary delays in making sales, providing against postponement beyond the statutory period, and as to making reports promptly. (T. D. 623, Jan. 23, 1903.)

SEC. 3191. When property subject to tax, but upon which the tax has not been paid, is seized upon distressment and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

As taxes are now paid by stamps, assessments under the last clause are rarely necessary. (See sec. 3458, p. 362.)

SEC. 3192. When any property advertised for sale under distressment, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees.

Proceedings on distressment.

When property sold under distressment is subject to tax, and tax not paid.

When property sold under distressment may be purchased for United States, etc.

*Property dis-
tained to be re-
stored on pay-
ment before sale.*

SEC. 3193. In any case of distress for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of nonpayment as aforesaid, the said officer shall proceed to sell the said goods, chattels, or effects at public auction, (and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distress and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.)

The clause in parenthesis is obsolete in view of subsequent legislation.

Section 3193 was amended by the act of May 27, 1908, to the extent that overplus can not be returned to legal owner by a collector, but must be deposited as internal-revenue collections. (Int. Rev. Cir. No. 725; T. D. 1373.)

Allowances for salary and office expenses of collectors are in lieu of salary and commissions formerly provided by law, except a commission of one-half of one per centum on sales of tax-paid spirit stamps is allowed where the office is less than maximum. See secs. 3148, p. 63, and 3314, p. 208.

*Effect of certifi-
cate of sale.*

SEC. 3194. In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

*When property
distrained is not
divisible.*

SEC. 3195. When any property liable to distress for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all costs, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same; or, if he can not be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support thereof,

shall, by warrant on the Treasury, cause the same to be paid to the applicant.

The act of May 27, 1908 (35 Stat., 325), in effect amends this section by providing that the gross amount of proceeds shall be deposited in the Treasury.

Surplus proceeds of sales can not in any case be returned to legal owner by a collector, but must be deposited as internal-revenue collections. Claims for surplus proceeds in cases where persons entitled to receive same are not known at time of sale, will be made and paid as heretofore. (Cir. 725; T. D. 1373.)

SEC. 3196. When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

When real estate may be sold to satisfy taxes.

SEC. 3197 [as amended by sec. 3, act of Mar. 1, 1879 (20 Stat., 327)]. The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection-district where the said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid. If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

Proceedings for seizure and sale of real estate for taxes.

And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by

Purchases for United States.

the United States district attorney for the district in which the property is situate, and shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deed to the Commissioner of Internal Revenue.

Adjournment of sale. And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner.

Deeds. And it is hereby provided, That all certificates of purchase, and deeds of property purchased by the United States under the internal-revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

* * * * *

(1) *Seizure of real property.*—Unless required by statute, a levy or seizure of real property for the purpose of sale to satisfy a debt or tax may be made without going upon the premises, by making a memorandum upon the warrant of the description of the premises for the purpose of a levy and sale.

(2) *Sale of real property.*—A deputy collector of internal revenue, to whom a warrant was directed for the collection of a delinquent tax due from A, levied upon 330 acres of land belonging to A, when said tax became due, by entering upon said warrant a correct description of the premises, by metes and bounds, but at the same time incorrectly stated therein that they were in the occupation of B, who lived over 2 miles distant from the premises, and afterwards offered the premises which said B lived on for sale upon the erroneous assumption that they were the premises of A, upon which he levied as above, and there being no bidders, declared the same purchased for the United States, for the amount of the tax, interest thereon, and charges. Held that there was no valid sale of the premises, and that the United States took nothing by the subsequent conveyance to it from the collector. (*United States v. Hess*, 5 Sawyer, 533; 25 Int. Rev. Rec., 201, 240.)

When real estate is offered for sale under warrant of distraint and is bid in for the United States, the amount bid should be for no larger sum than is necessary to prevent the sale for an inadequate price. (T. D. 1654.)

If property is bid in for an amount equal to the tax it extinguishes the debt, and suit can not be maintained on the bond. (*United States v. Triplet*, 22 Int. Rev. Rec., 207.)

Bill in equity by party not in possession to remove cloud from title to land purchased by United States not authorized unless State Statutes authorize it. (*Wilson v. United States*, 118 U. S., 86.)

It is a general rule that in the execution of a power to sell lands for nonpayment of taxes a strict compliance with all the material requirements of the statute authorizing the sale is required.

Regarding the seizure and sale of real estate for taxes. (Reg. No. 12, Rev., p. 41; *United States v. Mackoy*, 2 Dill., 299; *Mansfield v. Excelsior Refining Co.*, 135 U. S., 326; 36 Int. Rev. Rec., 165.)

Offers for real estate to be deposited as internal-revenue collections. (Act May 27, 1908; T. D. 1373.)

The officer's fee of \$10 for making the sale of real estate under distraint proceedings is no longer allowed. (See sec. 3206; T. D. 1373.)

SEC. 3197a. [An act to regulate the manner in which property shall be sold under orders and decrees of any United States courts (act of Mar. 3, 1893, 27 Stat., 751).] That all real estate or any interest in land sold under any order or decree of any United States Court shall be sold at public sale at the Court-house of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or decree of sale may direct.

SEC. 2. That all personal property sold under any order or decree of any Court of the United States shall be sold as provided in the first section of this act, unless in the opinion of the court rendering such order or decree, it would be best to sell it in some other manner. Sale of personal property.

SEC. 3. That hereafter no sale of real estate under any order, judgment, or decree of any United States Court shall be had without previous publication of notices of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued and having a general circulation in the county and State where the real estate proposed to be sold is situated, if such there be. If said property shall be situated in more than one county or State, such notice shall be published in such of the counties where said property is situated, as the court may direct. Said notice shall, among other things, describe the real estate to be sold. The court may, in its discretion, direct the publication of the notice of sale herein provided for to be made in such other papers as may seem proper. Publication of notice of sale of real estate.

Bill for advertising must be made on Form 153 approved by the Comptroller December 29, 1909. (Regulations No. 2, rev., p. 48.)

SEC. 3198. Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time hereafter provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the State in which such real estate is situate upon the subject of sales of real estate under execution. Certificate of purchase. Deed.

Collector's deed
to be prima facie
evidence, etc.

SEC. 3199. The deed of sale given in pursuance of the preceding section shall be prima facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto.

In case of a distillery, although consent is given that the Government has a prior lien, only interest of distiller is transferred to purchaser. (*Mansfield v. Excelsior Refining Co.*, 36 Int. Rev. Rec., 165; 135 U. S., 326.)

Relative to deeds. (*Brown v. Goodwin*, 75 N. Y., 409; *Fox v. Stafford*, 90 N. C., 296; *Flemister v. Flemister*, 83 Ga., 79.)

Collector may
seize lands of de-
linquent in any
district of same
State.

SEC. 3200. Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection district within the State in which such officer resides; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district.

Redemption of
land prior to sale.

SEC. 3201. Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Redemption of
land after sale.

SEC. 3202. The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he can not be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

Record of sales.

SEC. 3203 [as amended by sec. 3, act of Mar. 1, 1879 (20 Stat., 327)]. It shall be the duty of every collector to keep a record of all sales of land made in his collection district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, amount of fees and expenses, the name of the purchaser and the date of the deed; and said record shall be certified by the officer making the sale. And on or before the fifth day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue.

And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to

the collector, and to certify the record thereof. In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Record of sales, Book No. 21. Report on Form 128.

SEC. 3204. When any lands sold, as aforesaid, are re-deemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption. Redemptions to be entered on record.

SEC. 3205. Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distress or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid. Successive seizures may be made, when.

SEC. 3206. The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distress and other seizures; and shall have power to determine whether any expense incurred in making any distress or seizure was necessary. Fees and charges in seizure cases.

Regulations, No. 2, revised, page 48; T. D. 1373; T. D. 1521.

SEC. 3207. In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. Proceedings in chancery to subject real estate to payment of tax.

"The Judicial Code," Act of March 3, 1911 (36 Stat. 1087), which goes into effect January 1, 1912, abolishes Circuit Courts and imposes the powers and duties thereof on District Courts.

The provision for suit in equity to enforce a lien for taxes does not supersede the remedy by distraint but is cumulative. (*Blacklock v. United States*, 208 U. S. 75, affirming 40 Ct. Cls., 90; *Alkan v. Bean*, 8 Biss., 83; 23 Int. Rev. Rec., 351.)

Bill under section 3207 to subject real estate to payment of assessment on distilled spirits. (*United States v. Rindskopf*, 8 Biss., 507.)

Bill in equity to enforce lien on distillery. (*United States v. Mackoy*, 2 Dill., 229.)

The Government loses none of its remedies to collect its revenue unless there is an express repeal or abrogation of some existing remedy. (18 Op. Atty. Gen., 248.)

Commissioner
to have charge of
real estate ac-
quired under in-
ternal-revenue
laws, etc.

SEC. 3208 [as amended by sec. 3, act of Mar. 1, 1879 (20 Stat., 327)].

The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United States by judgment of forfeiture under the internal-revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them; and, with the approval of the Secretary of the Treasury, may at public vendue, and upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States as aforesaid; and until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient.

And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of one per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Solicitor of the Treasury to have charge of real estate owned by United States in certain cases. (Sec. 3750.)

SEC. 3470. At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States.

Section 3470 does not apply to cases arising under the internal-revenue laws. (To United States Attorney Stripling, Oct. 8, 1898.)

Commissioner not authorized to take charge of lands acquired in satisfaction of judgments recovered on the official bonds of collectors of internal revenue. (16 Op. Atty. Gen., 143.)

Real estate purchased by the Government is not subject to State taxation after it has become the property of the United States. (Van Brocklin v. State of Tennessee, 117 U. S., 151.)

Regulations No. 12, revised, page 35.

SEC. 3209. Whenever a collector has on any list duly returned to him the name of any person not within his collection district who is liable to tax, or of any person so liable who has, in the collection district in which he resides, no sufficient property subject to seizure or distress, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

SEC. 3210. The gross amount of all taxes and revenues received or collected by virtue of this title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description; and a certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, assistant treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: *Provided*, That in districts where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper Government depository, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month.

When list to be sent to district where the party taxed resides or has property.

Collections to be paid into Treasury daily.

[Sundry civil appropriation act for the fiscal year ending June 30, 1909, approved May 27, 1908 (35 Stat., 325).]

* * * * *

Collections to be paid daily into the Treasury. After June thirtieth, nineteen hundred and eight, collectors of internal revenue shall pay daily into the Treasury of the United States, under instructions of the Secretary of the Treasury, the gross amounts of all collections of whatever nature made, by authority of law, and the same shall be covered into the Treasury as internal-revenue collections.

(T. D. 1373, Circular No. 725.)

* * * * *

Collectors to render accounts quarterly. Collectors of internal revenue shall render their revenue accounts quarterly.

Money receivable for internal revenue:

(Sec. 3473, R. S., as amended by act Feb. 28, 1878, 20 Stat., 25, and act of March 2, 1911, 36 Stat., 965.) Instructions to officers (Regulations No. 2, revised, p. 10.)

See section 3216, page 111.

The standard silver dollar and silver certificates authorized by the act of February 28, 1878 (20 Stat., 25), are legal tender to any amount. Silver coins less than \$1 legal tender to amount of \$10, act June 9, 1879 (21 Stat., 7). Gold coins (sec. 3511). Silver certificates for \$1, \$2, and \$5, act March 3, 1887. (24 Stat., 515.) Standard of value fixed—gold dollar. Act of March 14, 1900 (31 Stat., 45).

An act relating to Hawaiian silver coinage and silver certificates. (Act Jan. 14, 1903, 32 Stat., 770.)

Regulations on deposit of funds see Reg. No. 2, revised, pp. 13-16.

Miltenerger *v.* Cooke (18 Wall., 421) decided that a collector in accepting a draft in payment of a tax acts at his own risk and does not bind the United States. But see Act of March 2, 1911, below.

American Brewing Co. *v.* U. S. (33 Ct. Cls., 348).

Depositories.

SEC. 3211. The Secretary of the Treasury is authorized to designate one or more depositories in each State, for the deposit and safe-keeping of the money collected by virtue of the internal-revenue laws; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department.

See section 89, Criminal Code, page 410.

Any form of exchange, which designated depositories will receive as cash, issuing therefor certificates of deposit, under the provisions of sec. 3211, Revised Statutes, may be received in payment of taxes.

Certified checks receivable for taxes.

Act of March 2, 1911 (36 Stat. 965). *That it shall be lawful for collectors of customs and of internal revenue to receive for duties on imports and internal taxes certified checks drawn on national and State banks, and trust companies during such time and under such regulations as the Secretary of the Treasury may prescribe. No person, however, who may be indebted to the United States on account of duties on imports or internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or*

taxes, in accordance with the terms of this Act, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

Dept. Cir. No. 25, April 18, 1911. (T. D. 31513.)

SEC. 2. That this Act shall be effective on and after June first, nineteen hundred and eleven.

SEC. 3212. Every collector shall, at the expiration of each month after he commences his collections, transmit to the Commissioner of Internal Revenue a statement of the collections made by him within the month. And every collector shall complete the collection of all sums assigned to him for collection, and shall pay over the same into the Treasury, and shall render his accounts to the Treasury Department as often as he may be required.

See provisions of law in Appendix as to penalty for using public funds, failing to render accounts, etc.

See section 12, act July 31, 1894, Appendix, page 406.

Collectors are required to render disbursing accounts monthly and revenue accounts quarterly. Act of May 27, 1908 (35 Stat., 325).

They will render accounts upon giving new bonds; disbursing account upon giving new disbursing officer's bond and revenue account upon giving new collector's bond, and final account upon separation from the service.

The Auditor for the Treasury Department shall receive and examine all accounts for salaries and incidental expenses of the office of the Secretary of the Treasury, and all bureaus and offices under his direction, all accounts relating to * * * internal revenue * * *. (Sec. 7, act July 31, 1894; Supp. U. S. Rev. Stat., vol. 2, p. 213. "Dockery bill.")

SEC. 3213. It shall be the duty of the collectors, in their respective districts, subject to the provisions of this title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tam or otherwise, before any circuit or district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the dis-

*suits, etc., for
fines, penalties,
and forfeitures,
and for taxes.*

strict within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

"The Judicial Code", Act of March 3, 1911 (36 Stat. 1087), which goes into effect January 1, 1912, abolishes Circuit Courts and imposes the powers and duties thereof on District Courts.

See section 733, in Appendix, page 385; section 838, page 401; section 3164, page 77.

Suits for the recovery of taxes can be brought at any time, whether the taxes have been assessed or not, and whether they are assessable or not. (*Dollar Savings Bank v. United States*, 19 Wall., 227; 19 Int. Rev. Rec., 89. *King v. United States*, 99 U. S., 229. *United States v. Little Miami Co. and X. R. R. Co.*, 1 Fed. Rep., 700. *United States v. Tilden*, 9 Ben., 368; 24 Int. Rev. Rec., 99, T. D. 676.)

Suits commenced in a criminal case on filing an indictment; in a civil case on filing a declaration. (T. D., 18941, 1898.)

A civil action upon a bond grows out of a contract. The penal sum named in a bond is not a penalty within the statute of limitations. (*Raymond v. United States*, 14 Blatchf., 451.)

Interest.—Interest on taxes sued for runs from time taxes were due. (*United States v. Erie Railroad*, 106 U. S., 327; 29 Int. Rev. Rec., 58.)

In the case of taxes not assessed, where no special law applies, interest should be claimed from the commencement of the suit, if no previous demand has been made, or from date of demand, if demand can be proved.

Interest due under the general principle of law on the subject. (*Young v. Golbe*, 15 Wall., 562. *Bonnafon v. United States*, 14 Ct. Cls., 484.)

Partners civilly liable for violation of law committed by co-partner. (*United States v. Thomasson*, 4 Biss., 99.)

Indictment—recovery of fines and penalties. (*United States v. Craft*, 43 Fed. Rep., 374; 36 Int. Rev. Rec., 360.)

A penalty may be recovered by indictment or by civil action in the form of an action for debt. (*Lees v. United States*, 150 U. S., 479. *U. S. v. Foster*, 2 Biss., 453; 19 Int. Rev. Rec., 5.) But in case of alternative punishment see *U. S. v. Morin*, 4 Biss. 93.

The term penalty involves the idea of punishment and its character is not changed by the mode in which it is inflicted, whether by civil action or a criminal prosecution. (*U. S. v. Chouteau*, 102 U. S., 603; 27 Int. Rev. Rec., 49.)

Cumulative penalties. (Case of *Leszynsky*, 25 Int. Rev. Rec., 71.)

A judgment in a criminal case must conform to the requirements of the statute, and any variation therefrom, either in the character or extent of the punishment inflicted, avoids the judgment. (*Woodruff v. United States*, 58 Fed. Rep., 768.)

A court has no authority to impose a fine only in a case where the law requires fine and imprisonment. (*U. S. v. Braun and Fitts*, 158 Fed. Rep., 456.)

It was held by the Supreme Court in *ex parte Karstendick* (93 U. S., 396) that in cases where the statute makes hard labor a part of the punishment it is imperative upon the court to include that in the sentence. (In re *Johnson*, 46 Fed. Rep., 481.)

All participants in misdemeanors are liable as principals. (*U. S. v. Sykes*, 58 Fed. Rep., 1000. *U. S. v. White & Paller*, T. D. 1334.)

Section 332 of the act of March 4, 1909 (35 Stat., 1152), Criminal Code.—Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

Felonies defined. (See p. 388.)

SEC. 3214. No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: *Provided*, That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

Suits for taxes, etc., not to be brought without sanction of Commissioner.

Section 969, Appendix, page 392, has a similar provision to that contained in the above proviso.

For the recovery of taxes, see Regulations, No. 2, revised, page 36; Regulations, No. 14, revised, page 9.

Circular 319, relative to suits for taxes (34 Int. Rev. Rec., 333); Circular 331, relative to suits for taxes, June 21, 1889 (35 Int. Rev. Rec., 197).

Right of the United States to sue for taxes. Set-offs growing out of independent claims can not be pleaded. (*United States v. Pacific R. R.*, 4 Dill., 66; see sec. 951, p. 36.)

A party claiming a credit which was not presented to the accounting officers of the Treasury can not set it up in an action brought by the United States against him for the recovery of a debt. (*Railroad Co. v. United States*, 101 U. S., 543; 26 Int. Rev. Rec., 165.)

SEC. 3215. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal-revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws.

Regulations as to suits, for government of officers.

Regulations, No. 12, revised.

The Solicitor of the Treasury is authorized to establish regulations for the observance of district attorneys and marshals in suits in which the United States is a party, other than those arising under the internal-revenue laws. (Secs. 377 and 379, R. S.)

Duties of district attorneys as to prosecutions, etc., section 838 R. S., Appendix, p. 401.)

Duty of collectors to look after suits. (T. D. 702.)

United States attorneys are instructed that there should be no unnecessary delay in proceedings to enforce collection of judgments. (T. D. 348, May 23, 1901.)

SEC. 3216. All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties, shall be paid to collectors as internal taxes are required to be paid.

Moneys recovered by suits to be paid to collectors.

The gross amount of all moneys received for the use of the United States is required to be paid by the officer or agent receiving the same into the Treasury at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. (Sec. 3617, p. 404, Appendix. See also sec. 3210, p. 107, and act of May 27, 1908, p. 108.)

See section 3621, as amended by act of May 28, 1896, page 405.

Instructions to clerks of courts as to disposition of moneys in the registry of the court. (Regulations, No. 12, revised, p. 21.)

Taxed costs payable to the collector. (*United States v. Wolters* (1892), 51 Fed. Rep., 896.)

Costs, as well as all other moneys collected in cases arising under the internal-revenue laws, are required by the law to be paid over by the court clerks to the collectors of the districts in which these cases arise. (T. D. (1898), No. 19306.) See notes under section 797, as amended, p. 403.

Dues from delinquent collector to be collected by restraint and sale.

SEC. 3217. When any collector fails either to collect or to render his account, or to pay over in the manner or within the times provided by law, the (First) Comptroller of the Treasury shall, immediately after evidence of such delinquency, report the same to the Solicitor of the Treasury, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. And the said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sum which may remain due, with five per centum thereon, and all the expenses and charges of collection, by distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal property on execution in the State wherein such collector resides. And the bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and *prima-facie* evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. And for want of goods and chattels, or other personal effects of such collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection district, and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy. Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance thereof, to be executed and acknowledged in the manner and form prescribed by the laws of the State in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. And all moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid.

See sections 3624 and 3625, in Appendix, pages 407, 408, as to proceedings against officers failing to account for public moneys.

* * * The First Comptroller of the Treasury shall hereafter be known as Comptroller of the Treasury.

He shall perform the same duties and have the same powers and responsibilities (except as modified by this act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs; and all provisions of law not inconsistent with this act, in any way relating to them or either of them, shall hereafter be construed and held as relating to the Comptroller of the Treasury.
 * * * (Sec. 4, act July 31, 1894; Supp. U. S. R. S., vol. 2, p. 213.)

SEC. 3218. Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncancelled to the Treasury, and with the amount of taxes contained in the lists transmitted in the manner heretofore provided to other collectors, and by them received as aforesaid; also with the amount of the taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the (First) Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

Due diligence.

See note under section 3217 as to change from First Comptroller to Comptroller.

Claims for credit. (Sec. 951, p. 424, Appendix.)

Certificate of due diligence condition precedent to allowance of credit. (United States *v.* Kimball, 101 U. S., 726.)

Question of due diligence and other questions relative to collectors' accounts considered. (United States *v.* Barton Able, 15 Int. Rev. Rec., 41, 50.)

Duplicate charges arising from the charging of a collector with assessed special taxes subsequently paid by stamps are adjusted by Auditor of the Treasury Department through claims on Form 488, and those arising from assessment of spirit taxes subsequently paid by stamps are adjusted through claims on Form 66A. Regulations No. 14, revised, pages 16-17. But see Form 325, and column 10 $\frac{1}{2}$, Form 23.

Claims for credit for stamps issued in accordance with notice of accepted offers in compromise should be made on Form 630. Regulations No. 2, revised, page 30. (T. D. 1399 and 1565.)

Fractions of a cent should never be entered in the records of daily receipts. (T. D. 289, Feb. 25, 1901.)

See section 3444, page 354, articles in bonded warehouses.

SEC. 3219. In case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected Death, etc., of collector; uncollected balances,

shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same.

Remission and refunding of taxes, penalties, subject to regulations prescribed by the Secretary of the Treasury, etc.

SEC. 3220. The Commissioner of Internal Revenue, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: *Provided*, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation.

See section 989, page 398, as to certificate of probable cause.

Abatements and refunding may also be made to distillers in cases of unavoidable accident or misunderstanding. (Sec. 3309a, p. 204.)

Until an appeal is taken to the commissioner no suit whatever can be maintained to recover back taxes illegally assessed or erroneously paid. (*United States v. Savings Bank*, 104 U. S., 728.)

The Government has provided a complete system of corrective justice in regard to all taxes imposed, founded upon the idea of appeals within the executive departments. (*United States v. Pacific Railroad*, 4 Dill., 66; Fed. Cas., 15983.)

The commissioner possesses no equity power in cases of abatement. If the tax is a legal one, the commissioner can not abate it. (Decision No. 180, 36 Int. Rev. Rec., 13.)

A rejected claim may be prosecuted against the collector, and an allowed claim not paid may be sued for in the Court of Claims. (*United States v. Real Estate Savings Bank*, 104 U. S. (14 Otto, 728; 28 Int. Rev. Rec., 87.)

When the Commissioner of Internal Revenue has rendered a decision allowing a claim, and has issued his certificate accordingly, but payment is refused by the accounting officer, the claimant is entitled to recover in a suit in the Court of Claims. (*Kaufman v. United States*, 96 U. S., 567, affirming 11 Ct. Cls., 659; 24 Int. Rev. Rec., 135.)

Protest.—It is a principle universally recognized that an action can not be maintained for the recovery back of money paid in discharge of a tax illegally assessed, unless the payment was made under protest. But that principle has been held by the Commissioner of Internal Revenue and other officers of the department as too technical and too exacting for application to the refund of taxes under this section. (*Real Estate Savings Bank v. United States* (1880), 16 Ct. Cls., 335; 27 Int. Rev. Rec., 154.)

No written notice of protest required. (*Wright v. Blakeslee*, 101 U. S., 174; 20 Int. Rev. Rec., 179.)

Rule as to protest. (*Chesebrough v. U. S.*, 192 U. S., 253; T. D., 747; U. S. v. N. Y. and Cuba Mail Steamship Co., 200 U. S., 488; 25 Op. Atty. Gen., 605; 26 ibid., 472.)

Though there is some conflict in the dicta of the Supreme Court, the true doctrine is that, when taxes are paid under protest or with notice that the payor contends that they are illegal and intends to institute suit to compel their repayment, a sufficient foundation for suit to recover has been established. *Herold v. Kahn* (1908), 159 Fed. Rep., 608.)

The apprehension of being stopped in business is sufficient duress to make payments involuntary. (*Swift Co. v. United States*, 111 U. S., 22.)

In auditing and paying a claim for a specific sum, for which appropriation has been made by Congress, the functions of the Government officers are only clerical. (*United States v. Louisville* (1898), 169 U. S., 249; affirming 31 Ct. Cls., 1.)

Interest.—United States does not pay interest on any claim which is due, because it is supposed to be always ready to pay. (*Stephani's Case*, 1 Lawrence Dec., 35; 26 Int. Rev. Rec., 313.)

It is a well-settled principle that interest is not allowed on claims against the United States unless the Government has stipulated to pay interest, or it is given by express statutory provision. (*Angarica v. Bayard*, 127 U. S., 260; *United States v. New York*, 160 U. S., 619; 7 Op. Atty. Gen., 523; 9 ibid., 57, 449. See secs. 963, 966, Appendix, p. 394.)

Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector, is entitled to interest, in the event of recovery, from the time of the illegal exaction. (*Erskine v. Van Arsdale*, 15 Wall., 75; *Conant v. Kinney* (1908), 162 Fed. Rep., 581; *Penn. Co.*, etc., v. *McClain*, collector, 105 Fed. Rep., 367; 108 ibid., 618.)

When a person accepts from the Government, without objection, payment of the sum illegally exacted, he gives up his right to sue for interest. (*Stewart v. Barnes*, 153 U. S., 456.)

Law relative to interest in suits against collectors reviewed. (Commissioners of Sinking Fund of Louisville v. Buckner, 48 Fed. Rep., 533.)

Where interest was allowed only from commencement of suit. (*Burrough v. Able*, 105 Fed. Rep., 366.)

The Government is not liable for interest after final judgment. (*United States ex rel. v. John Sherman*, 98 U. S., 567; 25 Int. Rev. Rec., 198; *Schell v. Cochran*, 107 U. S., 626.)

If an appeal is taken from an assessment and decided against the appellant, and the tax is afterwards collected, it is not necessary to take a second appeal after payment before commencing suit to recover the tax. (*San Francisco Savings Society v. Cary*, 2 Sawy., 393; 17 Int. Rev. Rec., 109.)

No claim for refund necessary when abatement claim has been made and considered upon its merits. (*De Barry v. Dunne*, 162 Fed. Rep., 961; *Schwartzchild & Sulzberger Co. v. Rucker*, collector, 143 Fed. Rep., 656; T. D., 974; *Grier v. Tucker*, 150 Fed. Rep., 657; *Cureton v. Rucker* (N. D. of Georgia), T. D., No. 1293, *contra*, *Hastings v. Herold*, 184 Fed. Rep., 759.)

Claims for refund.—Powers conferred upon the commissioner relative to refund of taxes. (*Barnett et al. v. United States*, 16 Ct. Cls., 515; VIII Comp. Dec., 85.)

Appeals for refund of taxes should be presented through collectors within two years after the tax is paid. Presentation to collector is equivalent to presentation to the commissioner. (*Real Estate Savings Bank v. The United States*, 16 Ct. Cls., 335; 27 Int. Rev. Rec., 153; 104 U. S., 728; 28 Int. Rev. Rec., 27.)

No authority to remit 50 per cent penalty unless illegally collected (VI Comp. Dec., 763; 8 ibid., 670.)

The words *wrongfully collected* do not give jurisdiction for refunding further than the word *illegally*. No equity powers con-

ferred on the Commissioner of Internal Revenue. (*Ridgway Case*, 16 Op. Atty. Gen., 667.)

Commissioner authorized, not obliged, to refund. (13 Op. Atty. Gen., 439.)

Right of commissioner to reconsider claim for refund and revoke allowance before payment. (*Ridgway v. United States*, 18 Ct. Cls., 707; 29 Int. Rev. Rec., 197.)

What constitutes a final award by the commissioner. (*Stotesbury v. The United States*, 23 Ct. Cls., 285; 34 Int. Rev. Rec., 142; 146 U. S., 196.)

Right of commissioner to refund, notwithstanding advice of secretary to the contrary. (*Sybrandt v. United States*, 19 Ct. Cls., 461; 30 Int. Rev. Rec., 135.)

Reopening rejected claims for refunding. (14 Op. Atty. Gen., 275; 18 Int. Rev. Rec., 28.)

The commissioner is not precluded from allowing a claim for refund, because a former commissioner has rejected a claim for abatement. (IX Comp. Dec., 354.)

The commissioner is authorized to reconsider and allow a claim which he had, through error of law, previously rejected. (XI Comp. Dec., 676.)

Reconsideration of claim for taxes after judgment. (25 Op. Atty. Gen., 605.)

United States not liable for unauthorized wrongs done by revenue officers. (*United States v. Cummings*; appeal from Court of Claims, 35 Int. Rev. Rec., 142; 130 U. S., 453.)

The general principle is that the Government can not be held liable for unauthorized wrongs inflicted by officers, though occurring while they are engaged in the discharge of official duties. (*Joel Mann v. United States*, 32 Ct. Cls., 581; *Christie-Street Commission Co. v. United States* (1904), 129 Fed. Rep., 506.)

An application for the refund of taxes, though informal or defective, may be regarded as a claim, so far at least as to be a foundation for an amendment. (14 Op. Atty. Gen., 615.)

Where a distiller in consequence of the destruction of the stamp is forced to affix a new one, the commissioner, on proof of these facts, may direct the price of the second stamp, or rather the tax thus a second time exacted, to be refunded. (13 Op. Atty. Gen., 574.)

The commissioner has no authority to refund to a surety on a distiller's bond who has paid a judgment recovered against him thereon the amount of such judgment, when the tax upon which this recovery was had was not illegally assessed, and the only claim for refund is founded on the allegation that the surety was not liable therefor on his bond. (*Seat v. United States* (1883), 18 Ct. Cls., 458.)

Refund to a surety who paid the tax. (VII Comp. Dec., 361.)

Where the Commissioner of Internal Revenue, in a case within the scope of his authority and jurisdiction, has ordered a refund, a court can not inquire as to the sufficiency of the evidence before him. (*Woolner v. United States*, 13 Ct. Cls., 355; 24 Int. Rev. Rec., 181.)

Neither the Comptroller of the Treasury nor any accounting officer has authority to review the commissioner's decision. (*Bank of Greencastle v. United States*, 15 Ct. Cls., 225; 26 Int. Rev. Rec., 126.)

Decisions by the Commissioner of Internal Revenue, in cases of refunding taxes, are binding, and, in the absence of fraud or mistake in calculation, not subject to revision. (*Dugan v. United States*, 34 Ct. Cls., 458; T. D. (1899), No. 21285. See also *Davidson v. United States*, 21 Ct. Cls., 298; *Nixon v. United States*, 18 Ct. Cls., 448; 29 Int. Rev. Rec., 157; *Louisville v. United States*, 31 Ct. Cls., 1; *Edison, etc., Co. v. U. S.*, 38 Ct. Cls., 208.)

When a particular authority is confided to a public officer, to be exercised by him in his discretion upon an examination of facts of which he is made the judge, his decision upon the facts

is, in the absence of any controlling provision of law, absolutely conclusive as to the existence of those facts. (*Allen v. Blunt*, Fed. Cas., No. 215; 3 Story, *C. C.*, 745; cited with approval in *U. S. v. Wright*, 11 Wall., 648.)

An allowance by the commissioner under this section of a claim for refund of taxes erroneously collected is conclusive as to the facts upon which the allowance is made, but not as to questions of law arising therein. (Decision by Compt. Tracewell, Sept. 21, 1899; VI Comp. Dec., 259.)

Judgments against collectors.—Under section 3220, the commissioner is authorized to pay to the plaintiff the amount of a judgment recovered against a collector of internal revenue for damages for a seizure of property for an alleged violation of the internal-revenue laws, and is not restricted to the payment of such amount to the collector. Judgment may be paid without certificate of probable cause. (*United States v. Frerichs*, 124 U. S., 315; 34 Int. Rev. Rec., 39.)

Accounts for judgments against collectors, appropriation necessary for payment. (VII Comp. Dec. 471.)

A judgment against a collector may be paid to the claimant or to the collector. (34 Int. Rev. Rec., 39.)

Regulation relative to transmitting claims for refund to Secretary. (*Dupasseur v. United States*, 19 Ct. Cls., 1.)

As to suits to enforce allowances. (*Boehm v. United States*, 21 Ct. Cls., 290.)

Various acts of Congress relative to refund commented upon. (*White v. Arthur*, 10 Fed. Rep., 80.)

Instructions relative to the preparation of claims. (Reg. No. 14, revised.)

Circular No. 174, dated October 30, 1877, relative to the taking of additional testimony in support of claims for abatement or refund of taxes.

The filing of a claim for the abatement of a tax alleged to have been erroneously assessed does not operate as a suspension of the collection of the tax. (Regulations No. 14, revised, p. 16.)

Attorneys duly registered in the Treasury Department, and filing powers of attorney, will be recognized in the prosecution of refunding claims. (T. D. 159.)

Refunding tax on contingent beneficial interests under section 3, act of June 27, 1902. "An act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth." See Department Circular No. 86 (Int. Rev. No. 630) as modified by the opinion of the Attorney General of August 1, 1902. (T. D. 570 and T. D. 595.)

SEC. 3221 [as amended by sec. 6, act of Mar. 1, 1879 (*20 Stat., 327*).] The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. *And when any distilled spirits are hereafter destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner*

Taxes on spirits accidentally destroyed.

thereof, after the time when the same should have been drawn off by the gauger and placed in the distillery warehouse provided by law, no tax shall be collected on such spirits so destroyed, or if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified.

This section provides allowance for loss by accidental fire or other unavoidable accident when the manufacture of spirits has been completed and they are destroyed before being drawn off and carried into the distillery warehouse and when the whisky is destroyed in the distillery warehouse.

Section 8, act of May 28, 1880 (sec. 3309a, p. 204), releases the distiller from the payment of tax upon spirits destroyed by accident while in the process of manufacture.

If the spirits are removed from a distillery warehouse to a manufacturer's warehouse, and are lost in the course of such removal, section 15, of the act of May 28, 1880, provides for remission of the tax. (Sec. 3433b, p. 336.)

A similar provision is made where spirits are removed from a distillery warehouse for export. (Act Dec. 20, 1879, sec. 3330b, p. 223.)

(*Greenbrier Distillery Co. v. Johnson, collector, et al.*, 88 Fed. Rep., 638.)

This section applicable to brandy stored in special bonded warehouses. (Sec. 5, act Mar. 3, 1877, p. 193.)

Secretary Manning's construction of the law relative to abatement of tax on spirits, said to have been lost from packages in warehouse. (31 Int. Rev. Rec., 189.)

Allowance for loss in warehouse. (Circ. No. 625; sec. 3294a p. 185, and sec. 3294b, p. 187.)

Leakage not casualty. (Revised ruling of the department May 25, 1894, giving historical review of the laws; 40 Int. Rev. Rec., 173.)

The collapse of a barrel filled with whisky from the pressure of other barrels superimposed upon it is not a casualty within the meaning of the law. (Letter from Secretary of the Treasury to Commissioner Internal Revenue, July 24, 1894; 40 Int. Rev. Rec., 237.)

"Casualty" means an accident; an event not to be foreseen or guarded against. Excessive and unusual summer heat is not a casualty, neither are undiscovered worm holes in whisky barrels a casualty within the meaning of this section. (Crystal Springs Distilling Co. v. Cox, collector, circuit court Kentucky, 1891; 47 Fed. Rep., 693; 37 Int. Rev. Rec., 328.) Decision affirmed, circuit court of appeals, 1892. (49 Fed. Rep., 555.)

Unavoidable casualty signifies events or accidents which human prudence, foresight, and sagacity can not prevent. (Wells v. Castees, 3 Gray, 325.)

Proof required in cases of destruction of distilled spirits by incendiaries. (43 Int. Rev. Rec., 285.)

Denial of claim for refund of tax on spirits alleged to have been destroyed by incendiary fire while in warehouse; insufficient evidence. (Letter from Secretary of the Treasury, Oct. 15, 1895; 42 Int. Rev. Rec., 49.)

Where spirits are withdrawn from warehouse tax paid and stamped, and afterwards destroyed by accident, the tax can not be refunded. (T. D. 18996, 1898.)

No provision authorizing relief when spirits are stolen from warehouse. (T. D. 19520, 1898.)

Distilled spirits seized by an internal-revenue officer and lost by his negligence, not lost through casualty, within section 3221. (U. S. v. Sisk (C. C. A.); 176 Fed. Rep., 885.)

Can abate the tax on spirits which have been in bonded warehouse beyond bonded period. (18 Op. Atty. Gen., 379; 32 Int. Rev. Rec., 94.)

The destruction of spirits stored in distillery warehouses by fire while in the warehouse constituted a "removal." (48 Fed. Rep., 714, reversed; *United States v. Peace et al.*, 53 Fed. Rep., 999.) See *Insurance Companies v. Thompson* (95 U. S. (5 Otto), 547).

If accounting officers refuse to allow a claim after the Secretary's decision in its favor, claimant can recover in Court of Claims. (*Hoffheimer Bros. v. United States*, 20 Ct. Cls., 371.)

Liability of obligors on warehousing bonds to pay the tax on spirits destroyed in a distillery warehouse can be relieved only in the manner prescribed by the statute. (*Farrell v. United States*, 8 Biss., 259; 99 U. S. (9 Otto), 221; 25 Int. Rev. Rec., 83.)

The statute (sec. 3221) contemplates that the burden of proof shall be upon the applicant. (Opinion of Solicitor of the Treasury. Letter to Secretary of the Treasury of Oct. 21, 1885, in re claim of John G. Roach.)

A revocation of an order for abatement under section 3221, Revised Statutes, does not restore the previous liability of the obligors on the warehousing bond to pay the tax on the spirits claimed to have been destroyed. (*United States v. Alexander et al.*, 110 U. S., 325.)

Regulations and instructions governing the abatement of taxes on spirits destroyed by fire, or other casualty. Regulations, No. 7, revised, and No. 14, revised.

Spirits destroyed by fire. (*Freeman v. U. S.*, 157 Fed. Rep., 195.)

SEC. 3222. The preceding section shall take effect in all cases of loss or destruction of distilled spirits as aforesaid which have occurred since January one, eighteen hundred and sixty-eight.

Retroactive effect of preceding section.

This does not embrace the later addition made to section 3221 by act of Mar. 1, 1879, section 6, which by its own terms expressly relates only to spirits thereafter destroyed. (See italicized portion of sec. 3221, p. 117.)

Section 5 of the act of June 7, 1906 (34 Stat., 215), page 233, extends the provisions of sections 3221 and 3223, Revised Statutes, as amended, to grape brandy withdrawn for use in the fortification of sweet wines, and which, prior to such use, is accidentally destroyed by fire or other casualty while stored in the fortifying room on the winery premises.

SEC. 3223 [as amended by sec. 3, act of Mar. 1, 1879 (20 Stat., 327).] When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance for a sum greater than the actual value of the distilled spirits before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.

When tax on lost spirits is indemnified by insurance.

The liability for tax on bonded spirits is an insurable interest. (*Insurance Company v. Thompson et al.*, 95 U. S. (5 Otto), 547.)

An insurance policy upon whisky in bond, without reference to the Government tax, entitles the assured to include the tax in his recovery in case of loss, if the assured is liable for the tax. (*Hedger v. Union Insurance Co.*, circuit court, district of Kentucky, 17 Fed. Rep., 498.)

In view of the foregoing statute and the decisions above cited, it is held, in cases where it is not expressly stipulated in the policies of insurance that the Government tax is not included in the insurance on the spirits, that the owner of the spirits is not entitled to any allowance, under section 3221, on so much of the tax as is equal to the valid insurance in excess of the actual value of spirits, exclusive of the tax.

Suits to restrain assessment or collection of taxes.

SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

The constitutionality of a law can not be inquired into in an injunction suit. (*The Delaware Railroad Co. v. Prettyman*, collector, 17 Int. Rev. Rec., 99.)

Allegations in a bill that an assessment is irregular and void do not constitute any ground for an injunction to restrain the collection of the assessment. (*Alkan v. Bean*, collector, 23 Int. Rev. Rec., 351; 8 Biss., 83.)

A bill in equity will not lie to enjoin a collector of internal revenue from collecting a tax assessed by the commissioner, although the tax is alleged in the bill to have been illegally assessed. (*Snyder v. Marks*, 109 U. S., 189; 29 Int. Rev. Rec., 403; *Moore v. Miller*, 5 App. Cas., D. C., 413.)

A collector can not be restrained from collecting an assessment by injunction. (*Pullan v. Kissinger*, 2 Abb. (U. S.), 94; 11 Int. Rev. Rec., 197; *Kensett v. Stivers*, 27 Int. Rev. Rec., 1; 18 Blatch., 397; 10 Fed. Rep., 517; *State Railroad Tax Cases*, 92 U. S. (2 Otto), 613; *Keely v. Sanders*, 99 U. S., 443; *Robbins v. Freeland*, collector, 14 Int. Rev. Rec., 28; *United States v. Hodson*, 14 Int. Rev. Rec., 100; *Roback v. Taylor* (1866), 4 Int. Rev. Rec., 170.)

Purely injunction bills can not be maintained to restrain the collection of taxes upon the sole ground of their unconstitutionality. (*Allen v. Pullman's Palace Car Co.*, 139 U. S., 658.)

A collector can not be enjoined from collecting a tax, but a suit to recover the money back when illegally collected is authorized. (*Armour v. Roberts*, 151 Fed. Rep., 846.)

It is contrary to every principle of equity jurisprudence that the collection of taxes on personal property should be stayed by injunction. (*Nye v. Washburn*, western district of Wis. 125 Fed. Rep., 818.)

The courts will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties. (*United States v. Black*, Commissioner of Pensions, 128 U. S., 40.)

The court in this case followed an earlier decision of Decatur *v. Paulding* (14 Pet., 497), and made clear the distinction between the mere ministerial act of the executive officer, which may be controlled by the courts by mandamus, and an act in the performance of which an officer is vested with quasi-judicial discretion.

In matters which require an executive officer to exercise judgment or discretion, no rule will issue for a mandamus. (*Carrick v. Lamar*, 116 U. S., 423.)

When mandamus may issue. (*Marbury v. Madison*, 1 Cranch (U. S.), 137; *United States v. Schurz*, 102 U. S., 378.)

A bill for a mandatory injunction, requiring a collector to accept an export bond for spirits in a bonded warehouse after the bonded period has expired, and allow their withdrawal for export without payment of the tax, is in effect a bill to restrain the collection of taxes, which the court is forbidden to entertain. (*Miles v. Johnson*, collector, 59 Fed. Rep., 38; 40 Int. Rev. Rec., 10.)

A collector can not be restrained by injunction from making a seizure. (See under sec. 3163, p. 75.)

Suits to recover taxes collected under second assessment, burden of proof as to the collector or deputy collector was false or fraudulent, fraud, etc.

SEC. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent,

or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, state-

ment, or return was not false nor fraudulent, and did not contain any understatement or undervaluation.

Bergdoll v. Pollock, (95 U. S., 337).

SEC. 3226. No suit shall be maintained in any court for the recovery of any internal tax alleged to have been wrongfully collected, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

In *Hicks v. James' Administratrix*, 48 Fed., 542, the plaintiff brought suit to recover certain taxes which it was claimed had been illegally exacted, and the question as to whether there had been a proper appeal made to the commissioner before the suit was instituted was raised, and the difference between an appeal taken under Forms 46 and 47 clearly shown. The case was later affirmed by the Supreme Court. (*James' Administratrix v. Hicks*, 110 U. S., 272; *Hastings v. Herold*, 184 Fed. Rep., 759.)

In extending jurisdiction to United States courts by the act of March 3, 1887, the provisions of sections 3226 and 3227, Revised Statutes, were not abrogated. (*Christie Street Commission Co. v. U. S.*, 126 Fed. Rep., 991; affirmed 129 Fed. Rep., 506.)

A suit against the collector for the recovery of taxes is in reality a suit against the United States upon an implied contract to pay that which has been unlawfully taken. (*Armour v. Roberts* (1907), 151 Fed. Rep., 846).

As the right to sue the United States through its collectors, to recover taxes alleged to have been illegally collected, is only a remedy given by statute, no such right exists unless the conditions prescribed by sections 3226, 3227 are strictly complied with. (*Commissioners of the Sinking Fund of Louisville v. Buckner*, 48 Fed. Rep., 533; *Schmitt v. Trowbridge, collector, 24 Int. Rev. Rec.*, 381.)

The common-law right to sue a revenue officer for the recovery of taxes illegally exacted has been superseded by statute, and the remedy accorded thereby is deemed to be exclusive. (*Snyder v. Marks*, 109 U. S., 189; *Schoenfeld v. Hendricks*, 152 U. S., 691.)

In the absence of a statutory rule to the contrary, the defense of a statute of limitations, which is not raised either in pleading, or on the trial, or before judgment, can not be availed of. (*Retzer v. Wood, collector*, 109 U. S., 185.)

A promise on the part of a collector of taxes to repay a tax illegally collected and paid only under protest can not be implied where statute makes it the duty of such officer to pay into the public Treasury without any deduction on account of claims of any description the gross amount that he received.

The prohibition that no suit shall be maintained in any court to recover a tax illegally assessed, except on certain conditions stated in the section, operates on all suits brought subsequently to the time fixed by the act for it to take effect, and on suits brought in State courts as well as in Federal. (*The Collector v. Hubbard*, 12 Wall., 1.)

Upon an application by the United States for an order upon a receiver to pay an assessment, the receiver may show that the assessment was erroneous or illegal, without regard to the lapse of time or to whether there has been an appeal to the Commissioner of Internal Revenue. (*United States v. Nebraska Distilling Co.* (1897), circuit court of appeals, 80 Fed. Rep., 285.)

Limitation as to suits for recovery of taxes wrongfully collected. SEC. 3227. No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court unless the same is brought within two years next after the cause of action accrued: *Provided*, That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

The words "cause of action" mean the right of action. (*Wright v. Blakeslee*, 101 U. S., 174; 26 Int. Rev. Rec., 179.)

As to claim pending before commissioner June 6, 1872. (*James v. Hicks*, 110 U. S., 272.)

Jurisdiction. (*City of Philadelphia v. Collector*, 5 Wall., 720.)

State statute of limitations as affected by the Federal statute of limitations. (*Braun v. Sauerwein*, 10 Wall., 218.)

A person can not recover from an internal-revenue collector taxes paid which were in fact due, even though the manner of their assessment and collection was unauthorized. (*Schafer v. Craft*, 144 Fed. Rep., 907.)

Suits must be brought within two years after the cause of action accrued. (*Cheatham v. United States*, 92 U. S., 85; 22 Int. Rev. Rec., 30; *Kings County Savings Institution v. Blair*, 116 U. S., 200; 32 Int. Rev. Rec., 30; *Commissioners of the Sinking Fund of Louisville v. Buckner*, 48 Fed. Rep., 533; *Coblenz v. Abel*, Woolw. 293, Fed. Cas. No. 2926; *Christie-Street Commission Co. v. United States*, C. C. A. 136 Fed. Rep. 326, affirming 129 Fed. Rep., 506; *Farrell v. United States*, 167 Fed. Rep., 639.)

The right of action accrues at the expiration of six months after an appeal without action thereon and becomes barred in two years thereafter. (*Schwartzchild & Sulzerberger v. Rucker, collector* (1906), U. S. Circuit Court, northern district of Ga., 143 Fed. Rep., 656; T. D., 971.)

No officer of the Government is authorized to waive the statute of limitations imposed in favor of the Government. (*Christie-Street Commission Co. v. United States*, 129 Fed. Rep., 506.)

Claims for refunding, limitation. SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided*, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one

year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

Informal application regarded as a claim within the meaning of this section. (14 Op. Atty. Gen., 615.)

When this section does not apply. This limitation does not apply to claims for the redemption of stamps. (15 Op. Atty. Gen., 426.)

This limitation does not apply to claims under section 3221, page 117.

Section 3228 does not apply to claims for refund of legacy taxes under section 3, act of June 27, 1902. (13 Comp. Dec., 707.)

Claims for taxes recovered by judgments should be presented within two years after date of judgment.

Sec. 3229. The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Compromises.

Compromises after judgment, remissions, and pardons. (See sec. 3469, p. 399.)

Officers compromising offenses except as authorized by law; penalty. (Sec. 3169, p. 81, and sec. 3170, p. 83.)

District attorney or marshal compromising cases illegally; penalty. (Sec. 3170, p. 83.)

Opinion of the Attorney General as to the limitation of the power to compromise vested in the Secretary of the Treasury under sections 3229 and 3469, page 399. (17 Op. Atty. Gen., 213; 27 Int. Rev. Rec., 334.)

Compromises, course of proceedings indicated. The functions of the Secretary of the Treasury and the Attorney General are advisory. (12 Op. Atty. Gen., 472; 8 Int. Rev. Rec., 86.)

Power to compromise ceases as soon as judgment is rendered. (13 Op. Atty. Gen., 479.)

No power to compromise proceedings against officers. (14 Op. Atty. Gen., 8, 43.)

The right to compromise is understood to embrace the criminal as well as the civil liability of the defendant. (13 Op. Atty. Gen., 480.)

Can not compromise taxes legally due from a solvent taxpayer. T. D. 18854; 16 Op. Atty. Gen., 249; 25 Int. Rev. Rec., 14. United States *v.* Roelle et al., 24 Int. Rev. Rec., 332; Fed. Cas. No. 16186.)

See also *Dorsheimer v. U. S.*, (7 Wall., 166; 10 Int. Rev. Rec., 131), as to power to remit a tax.

Relative to compromise of liability of obligors on an export bond. (13 Op. Atty. Gen., 115.)

Canadian bank notes paid out by banks in the United States, tax on, compromise. (21 Op. Atty. Gen., 557.)

No power to compromise a suit brought against a collector of internal revenue for the recovery of tax claimed to have been illegally collected. (*Coca Cola Co. v. Rucker*; 23 Op. Atty. Gen., 507.)

Money deposited for compromise can not be held or set off against tax due. (*Boughton v. United States*, 12 Ct. Cls., 330; 13 ibid., 284.)

When party complies with terms of compromise it is conclusive. (*Sweeny v. United States*, 17 Wall., 75; *United States v. Child & Co.*, 12 ibid., 232; *Mason v. United States*, 17 ibid., 67.)

Discontinuance on payment of costs a compromise. (Op. Atty. Gen. (Hoar), 11 Int. Rev. Rec., 98; 12 Op. Atty. Gen. (Evarts), 536.)

Commissioner may direct an unconditional dismissal of a suit without recommendation of Attorney General. (12 Op. Atty. Gen., 553.)

The Attorney General exercises superintendence and direction over United States attorneys and general supervision over proceedings instituted for the benefit of the United States. He may absolutely dismiss or discontinue suits in which the Government is interested; a fortiori, he may terminate the same upon terms, at any stage, by way of compromise or settlement. (22 Op. Atty. Gen., 499; *Treas. Dec.* (1899), No. 21270.)

An agreement made with the United States District Attorney in the nature of a compromise is not valid unless with the concurrence of the officers above named. (*U. S. v. Quantity of Distilled Spirits*, 4 Ben., 349; *Fed. Cas.* 16099.)

There is no authority for a district attorney or collector to compromise, adjust, or settle any charge or complaint for any violation, or alleged violation, of the internal-revenue law. (T. D. 845, Dec. 9, 1904.)

United States Commissioners have no authority to settle cases. (T. D. 1216.)

A compromise operates for the protection of the offender against subsequent proceedings as fully as a former conviction or acquittal, and is a bar to a suit on a bond to recover penalties based upon the same offense. (*U. S. v. Chouteau* (1880), 102 U. S. 603; 27 Int. Rev. Rec., 51.)

The officers of the Treasury Department are authorized to compromise a case involving a violation of the oleomargarine statutes upon terms, which, in their judgment, are just and reasonable. The initiative of action is with the Commissioner. (26 Op. Atty. Gen., 282.)

Suits against illicit distillers may not be nolled without permission of Attorney General. (Sec. 3230, R. S.)

Commissioner may instruct United States attorney to prosecute or abstain. (Secs. 838, p. 401; 3214, p. 111.)

Instructions relative to offers in compromise. (T. D. 18854, Jan. 22, 1898; T. D. 20265, Oct. 28, 1898.)

As to compromises induced by threats and duress. (T. D. 206, Aug. 30, 1900; Int. Rev. Cir. 579.)

As to five-dollar offers. (T. D. 496, Apr. 2, 1902.)

Offers in compromise should include payment of costs. (T. D. 642, Mar. 20, 1903.)

Relative to deposit of amount offered. (T. D. 1253.)

Discontinuances of prosecutions.

SEC. 3230. No discontinuance or nolle prosequi of any prosecution under section three thousand two hundred and fifty-seven shall be allowed without the permission in writing of the Secretary of the Treasury and the Attorney-General.

Continuance of internal-revenue cases.

SEC. 3231. It shall be lawful for any court in which any suit or criminal proceeding arising under the internal-revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney.

CHAPTER THREE.

SPECIAL TAXES.

Sec.		Sec.	
3232.	Occupation not to be carried on until tax is paid.	3244 (amended).	Special taxes imposed on whom:
3233.	Business to be registered.	1st.	Brewers.
[3233a.]	Selling on passenger railroad trains or vessels.	2d.	Manufacturers of stills.
3234.	Persons in partnership at same place liable for only one tax.	3d.	Rectifiers.
3235.	Payment of one special tax not to cover several places of business.	4th.	Retail liquor dealers. Wholesale liquor dealers.
3236.	When more than one pursuit is carried on in same place by same person at same time.	5th.	Retail dealers in malt liquors. Wholesale dealers in malt liquors.
3237 (amended).	When special tax to be due, how reckoned.	Act of August 2, 1886, section 3; as amended by section 2, act of May 9, 1902:	Manufacturers of oleomargarine. Wholesale dealers in oleomargarine. Retail dealers in oleomargarine.
3238.	Stamps for special taxes.	Act of May 9, 1902, section 4:	Manufacturers of process or renovated butter.
3239.	Special-tax stamp to be exhibited in place of business.		Manufacturers of adulterated butter. Wholesale dealers in adulterated butter.
3240.	List of special-tax payers to be exhibited in collector's office.		Retail dealers in adulterated butter.
3241.	Death or removal after paying tax; business carried on without additional tax.	Act of June 6, 1896, section 3:	Manufacturers of filled cheese. Wholesale dealers in filled cheese. Retail dealers in filled cheese.
3242.	Carrying on business without payment of special tax; penalties.	Act of June 13, 1898, section 36:	Manufacturers, packers, and repackers of mixed flour.
[3242a.]	Same.	3246 (amended).	Special tax not to apply to vintners nor apothecaries in certain cases.
[3242b.]	Section 4, act of August 2, 1886. Same as to oleomargarine.		
[3242c.]	Section 4, act of May 9, 1902. Same as to process, renovated, or adulterated butter.		
3243.	Payment of special tax not to authorize violation of State laws nor prohibit State taxation.		

SEC. 3232. No person shall be engaged in or carry on ^{Occupation not to be carried on} any trade or business hereinafter mentioned until he has ^{until tax is paid.} paid a special tax therefor in the manner hereinafter provided.

See section 53, act of October 1, 1890, amending section 3237, Revised Statutes, modifying the above.

It was held in *License Tax Cases* (5 Wall., 462, 6 Int. Rev. Rec., 36) that the provisions of the act of Congress of June 30, 1864, "to provide internal revenue to support the Government," etc. (13 Stat., 223), and the amendatory acts requiring licenses for certain kinds of business and imposing penalties for not taking out and paying for them, were not contrary to the Constitution or to public policy, and that the provisions of the act of July 13, 1866, "to reduce internal taxation," etc. (14 Stat., 98), for the imposing of special taxes, in lieu of requiring payment for licenses, removed whatever ambiguity existed in the previous laws, and were in harmony with the Constitution and public policy.

Returns to be made (Form 11). (Sec. 3173, p. 86.)

For failure to make sworn return within time prescribed, without excuse of "sickness or absence," the Commissioner of Internal Revenue is required to add 50 per centum to the special tax. (Sec. 3176, p. 89.)

Prosecutions not to be commenced (except in cases of peddlers of liquors) against special-tax payers who make return and pay the tax at any time before expiration of the calendar month in which liability began. (T. D. 18946, 1898.)

Except in the case of persons engaging in business as liquor dealers in localities where such business is prohibited by local law. In such cases prosecution to be instituted unless the special tax is paid and the stamp posted before business is begun. (T. D. 1605, Mar. 25, 1910.)

Where a person, after his arrest for failure to pay special tax as required by law, proffers to the collector the amount of the tax and 50 per cent penalty, upon his signing and swearing to return (Form 11), the collector should receive the money proffered. This does not relieve such person from his criminal liability. (T. D. 21850, 1899.)

A verdict in favor of defendant in a criminal action does not estop the United States from proving the special-tax liability in a civil action. (U. S. v. Schneider, 35 Fed. Rep., 107.)

Trade or business to be registered.

SEC. 3233. Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and their places of residence, shall be so registered.

Special-tax stamps may be issued for certain kinds of business on passenger railroad trains or vessels.

[**SEC. 3233a.**] [*Joint resolution May 8, 1876 (19 Stat., 213).*] That nothing contained in chapter three of title thirty-five of the Revised Statutes shall prevent the issue, under such regulations as the Commissioner of Internal

Revenue may prescribe, of special-tax stamps to persons carrying on the business of retail dealers in liquors, retail dealers in malt liquors, or dealers in tobacco, upon passenger railroad trains or upon steamboats or other vessels engaged in the business of carrying passengers.

The special-tax stamps issued for the retailing of wine and liquor on buffet cars attached to passenger railway trains are to be made in general terms for such cars in "the United States," in view of the impracticability of repeated transfers of such stamps in the various districts and States through which the train passes. (T. D. 21318, 1899.)

Retailing liquors on small boats. (T. D. 1007.)

Persons in partnership at same place liable for only one tax.

SEC. 3234. Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

United States v. Glab, 99 U. S., 225; 25 Int. Rev. Rec., 84. (See section 3241.)

Payment of one special tax not to cover several places of business.

SEC. 3235. The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the

place of business, nor, except as hereinafter provided, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

Where beer is delivered to customers from a storage house, that house is held to be a place of sale for which special tax is required to be paid, unless there has, in every instance, been prior constructive delivery at a regular place of business elsewhere. (T. D. 18999, 1898.)

Where warehouses for storage of malt liquors are merely places of storage and not places where customers leave their orders, special tax is not required to be paid therefor, nor a special-tax stamp required to be posted up therein. (T. D. 21619, 1899.)

Goods are offered for sale at the place where they are kept for sale, and where a sale may be effected. They are not offered for sale elsewhere by sending abroad an agent with samples or by establishing an office for the purpose of taking orders. (U. S. v. Chevalier, 107 Fed. Rep., 434, affirming 102 Fed. Rep. 125.)

But a wholesale liquor dealer at one point permitting actual delivery from warehouse at another point without prior constructive delivery at place where special-tax stamp is held is liable for special tax at the place of delivery. De Bary et al. v. Dunne, collector. (172 Fed. Rep., 940; T. D. 1550.)

SEC. 3236. Whenever more than one of the pursuits or occupations hereinafter described are carried on in the same place by the same person at the same time, except as hereinafter provided, the tax shall be paid for each according to the rates severally prescribed.

SEC. 3237 [as amended by sec. 53, act of Oct. 1, 1890 (26 Stat., 567)]. That all special taxes shall become due on the first day of July, eighteen hundred and ninety-one, and on the first day of July in each year thereafter, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year; and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced to the first day of July following. Special tax stamps may be issued for the months of May and June, eighteen hundred and ninety-one, upon payment of the amount of tax reckoned proportionately under the laws now in force, and such stamps which have been or may be issued for the period ending April thirtieth, eighteen hundred and ninety (one) may upon payment of one-sixth of the amount required to be paid for such stamps for one year, be extended until July first, eighteen hundred and ninety-one, under such regulations as may be prescribed by the Commissioner of Internal Revenue.

And it shall be the duty of special tax payers to render their returns to the deputy collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, not later than the last day of the month, except in cases of sickness or absence, as provided

When more
than one pursuit
is carried on in
same place by
same person at
same time.

When special
tax to be due.

Returns.

for in section three thousand one hundred and seventy-six of the Revised Statutes.

This section is amendatory of sections 3173 (p. 86), 3176 (p. 89). It also repeals the proviso to section 3 of the act of August 2, 1886, relative to the special tax of manufacturers of oleomargarine commencing business subsequent to the 30th day of June in any year.

Time of payment. Special-tax payer, even though he makes sworn return within the calendar month of his liability, is liable to criminal prosecution if he fails to pay the tax within that month and to post the stamp in his place of business. (T. D. 20230, 1898.)

Stamps for special taxes.

SEC. 3238. All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax, and the Commissioner of Internal Revenue is required to procure appropriate stamps for the payment of such taxes; and the provisions of sections thirty-three hundred and twelve and thirty-four hundred and forty-six, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner of Internal Revenue shall have authority to make all needful regulations relative thereto.

Section 3312 as to distilled spirits, page 207.

Section 3446 as amended, page 355.

The act of December 24, 1872 (17 Stat., 401), first required special taxes to be paid by stamps.

Collectors prohibited from issuing receipts in lieu of stamps (Sec. 3183, p. 94). From issuing stamps before payment (Sec. 3169a, p. 82).

Receipt of partial payments for stamps prohibited. (T. D. 1457.)

Unlawful issue of receipts for moneys received in payment of special taxes. (Cir. 595, T. D. 297, March 11, 1901.)

Reporting delinquent special-tax payers for assessment.—All persons liable to pay a special tax who failed to pay the same prior to or during the calendar months in which liability thereto occurred should be reported on Form 23, with date of receipt of Form 11, or other application to pay tax noted in column 7, Form 23. (Special No. 185, Mar. 20, 1878; 24 Int. Rev. Rec., 99; Cir. No. 539, revising No. 470, June 27, 1899; T. D., No. 21316. Int. Rev. Cir. 590, Jan. 31, 1901, revising Cir. No. 410.)

Stamp not to be issued until Form 11 and the money have been received. (28 Int. Rev. Rec., 37. See T. D. 1560.)

The special-tax stamp is not a license, but merely a receipt for the tax. It puts the United States under no obligation whatever to the holder beyond assuring him against prosecution under the special-tax laws. License Tax Cases (4 Wall., 462; 6 Int. Rev. Rec., 36; T. D. 1484.)

The particular place of business, by street and number, to be designated in the stamp. (T. D., 18912, 1898.)

Special-tax stamp to be conspicuously placed in place of business. SEC. 3239. Every person engaged in any business, avocational, or employment, who is thereby made liable to a special tax shall place and keep conspicuously in his

Act 27 Feb., 1877 (19 Stat., 240). Verbal or written payment of said special tax; and any person who shall, or corrected.

through negligence, fail to so place and keep said stamps, shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of

prosecution; but in no case shall said penalty be less than ten dollars. And where the failure to comply with the foregoing provision of law shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed:

Provided, That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

The words "except tobacco peddlers" in third line omitted, as under existing law they are not required to pay a special tax.

Posting special-tax stamp. (Cir. letter, Sept. 26, 1898; T. D., 20094.)

SEC. 3240 [*As amended by the act of June 21, 1906, 34 Stat., 387*]. Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, *and upon application of any prosecuting officer of any State, County, or municipality he shall furnish a certified copy thereof, as of a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged.*

List of special-
tax payers to be
exhibited in col-
lector's office.

The names in this list should be the true names and not the fictitious ones under which parties may elect to do business. (36 Int. Rev. Rec., 14.)

Production of records of internal-revenue offices, or copies thereof except of Record 10 as above provided, or divulging information secured in an official capacity, for use in trial of persons indicted for violating State laws is forbidden. (T. D., 19245, 1898; 34 Int. Rev. Rec., 261; *In re Weeks* (Vt.), 82 Fed. Rep., 730; Judge Evans's decision in *re David N. Comingore*, collector Sixth district of Kentucky; T. D. (1899), No. 21584; 96 Fed. Rep., 552; *Boske v. Comingore* (477 U. S., 459; T. D., 104); *In re Lamberton*, 124 Fed. Rep., 446; T. D., 689; *Stegall v. Thurman*, 175 Fed. Rep., 813; T. D., 1616.)

Regulations prohibiting the giving out by collectors of records in their offices, or copies thereof, for purposes not contemplated by the internal-revenue laws. (Regulations No. 12 Revised, Sec. 3167, p. 79; Sec. 882, appendix, p. 391.)

Information (departmental), how furnished. (Dept. Cir. No. 69, July 5, 1906. Dept. Rule IX, p. 391.)

Records in a collector's office relating to special-tax payers are based on returns made by these persons under compulsion of law for the sole purpose of raising revenue for the United States. Collectors are not permitted to send out these records, or copies thereof, for use against the special-tax payers in cases not arising under the laws of the United States. (T. D., 19190, 1898.)

While all persons are entitled to inspect Record No. 10 in the collector's office at reasonable and proper times, and are not prohibited from copying the names and addresses of special-tax payers, yet no person is to be permitted to monopolize the book to the extent of interfering with the collector's use of it or to the exclusion of other persons. (T. D., 19225, 1898.)

The regulations prohibiting collectors from sending out their records, or making and furnishing copies thereof, do not authorize them to prevent the public inspection of Record No. 10 in their offices. (T. D., 19332, 1898.)

Scope of act of June 21, 1906. (T. D. 1050, T. D. 1164.)

~~Death or removal after paying tax; business carried on without additional tax.~~

SEC. 3241. When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house, and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax:

Provided, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person decreased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner of Internal Revenue.

A special-tax payer who discontinues business is not entitled to any rebate for the unexpired portion of the year for which the special-tax stamp was issued.

Special-tax stamps are not transferable from one dealer to another. When a new member is added to a firm paying special tax, a new stamp will be required. When two persons, each holding a stamp for business carried on by himself, form a partnership, the firm (a separate person, in law, from either of them) must pay special tax. Stamps for separate persons can not be joined together to answer for a partnership. (T. D., 19189, 1898; 35 Int. Rev. Rec., 285.)

Regulations governing the transfer of stamp upon removal of business from one place to another within a district or from one district to another. (Regulations No. 1, supplement No. 1, June 6, 1910; T. D., 1637.)

Collector has no discretion as to granting or declining to grant application for transfer of special-tax stamp. (T. D., 20338, 1898.)

No additional special tax in case of change of firm, one or more of its members succeeding to and carrying on the business at same place. (*United States v. Glab*, 99 U. S. (9 Otto), 225; 25 Int. Rev. Rec., 84.)

A member of a firm who has acquired the interest of the other members of the firm is entitled to transfer the business to another location without payment of additional special tax. (*United States v. Davis*, 35 Int. Rev. Rec., 46; 37 Fed. Rep., 468; Cir. No. 324; 35 Int. Rev. Rec., 109.)

A member of a firm who, upon its dissolution, carries on the business himself without associating any other person with him therein is entitled to continue the business under the firm's special-tax stamp and to have such stamp transferred to any other place to which he removes the business. (T. D., 20346, 1898.)

Where new partners are taken into a firm, thereby dissolving the old firm and creating a new partnership, the new firm can not, under the law, carry on business under the special-tax stamp of the old firm. It must make return and pay its own special tax reckoned from the first day of the month in which it began business. (T. D., 20550, 1899.)

Additional special tax not to be required of unincorporated club by reason of changes in membership, where such changes do not result in dissolution and formation of new club. (T. D. 1625, May 17, 1910.)

Firm changing into a corporation, new special tax required. (T. D. 1165.)

A mere change of name of a firm to which a special-tax stamp has been issued does not necessitate the taking out of a new stamp. (T. D. 19064, 1898; T. D. 1451.)

A special-tax stamp taken by a woman as a retail liquor dealer, in her own name, is sufficient for the same business conducted by her husband, who takes charge of it upon her retirement therefrom; he is not required to pay special tax and take out a stamp in his own name because of the fact that a town license was refused to her, but issued to him. (T. D. 19411, 1898.)

A special-tax payer's wife may continue business under his stamp. (T. D. 19026, 1898.)

SEC. 3242. * * * And every person who carries on the business of a brewer or wholesale or retail dealer in malt liquors, without having paid a special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than ten dollars nor more than five hundred dollars.

Carrying on business without payment of special tax.

The portion of this section which is omitted relates to rectifiers, liquor dealers, etc., and was superseded by the following section; and to tobacco, cigar manufacturers, etc., repealed by section 26, act of October 1, 1890.

[**SEC. 3242a.] [Sec. 16, act of Feb. 8, 1875 (18 Stat., 307).]**] That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years. * * *

Rectifiers, liquor dealers, etc., carrying on business without paying special tax.

Distiller carrying on business without giving bond, or with intent to defraud.

Penalties.

Payment of tax after the offense not a bar to prosecution. (*United States v. Van Horn*, 20 Int. Rev. Rec., 145; *United States v. Devlin*, 6 Blatch., 71; *United States v. Ellis*, 15 Int. Rev. Rec., 43.)

Special-tax stamp not retroactive. (*United States v. Angell*, 11 Fed. Rep., 34.)

The penalty is incurred by a rectifier who omits to pay the special tax irrespective of any intention to defraud. (*United States v. Rectifying Establishment of Sloss*, 11 Int. Rev. Rec., 46.)

In regard to distillers, see section 3281, page 173.

Prosecution must be by indictment or presentment, not by information. (*United States v. Johannesen*, 35 Fed. Rep., 411.)

See note under section 3213, page 109.

Rectifiers intending to defraud. (Sec. 3317, p. 210.)

[**SEC. 3242b.] [Sec. 4, act of Aug. 2, 1886 (24 Stat., 209).]**] That every person who carries on the business of a manufacturer of oleomargarine without having paid the special tax therefor, as required by law, shall, besides

Manufacturers of and dealers in oleomargarine carrying on business without payment of special tax.

being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars; and every person who carries on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than five hundred nor more than two thousand dollars; and every person who carries on the business of a retail dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than fifty nor more than five hundred dollars for each and every offense.

Penalty.

[SEC. 3242c.] [Sec. 4, of act of May 9, 1902 (32 Stat., 193).] That every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars; and every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than fifty nor more than five hundred dollars for each offense.

Payment of special tax not to authorize violation of State laws, nor prohibit State taxation.

SEC. 3243. The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

McGuire v. Commonwealth, 3 Wall., 387; License Tax cases, 5 ibid., 462; 6 Int. Rev. Rec., 36; affirmed in the case of *Peverear v. The Commonwealth*.

A license (special-tax stamp) from the Federal Government, under the internal-revenue act of Congress, is no bar to an indictment under a State law prohibiting the sale of intoxicating liquors. (*Peverear v. The Commonwealth*, 5 Wall., 475.)

The act of August 2, 1886 (24 Stat., 209), does not give authority to those who pay the taxes prescribed by it to engage in the manufacture or sale of oleomargarine in any State which lawfully forbids such manufacture or sale, or to disregard any regulations which a State may lawfully prescribe in reference to that article, and that act is not a regulation of commerce among the States. The statute of Massachusetts "to prevent deception in the manufacture and sale of imitation butter," is not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the States. (*Plumley v. Massachusetts*, 155 U. S., 461.)

Persons who engage in the sale of alcoholic liquor, even though such business is a violation of the law of their State, are nevertheless required to pay special tax under the internal-revenue laws of the United States. The stamp, however,

issued to them is not a license, and does not protect them from prosecution, conviction, and sentence under the State law. (T. D. (1899) No. 21851; see also T. D. 1484, Apr. 21, 1909.)

Special tax to be paid by town and State liquor agents. (T. D. 973.)

State agencies. (South Carolina *v.* United States, 199 U. S., 437; (T. D. 961, 1904); 139 Ct. Cls., 257; T. D. 759.)

A State statute requiring the holder of a special-tax stamp to perform duties in conflict with the Federal statute is unconstitutional.

A State may not so exert its police power as to directly hamper or destroy a lawful authority of the United States. (North Dakota *ex rel.* Flaherty *v.* Hanson, 215 U. S., 515.)

SEC. 3244, [as amended.] Special taxes are imposed as follows:

First. Brewers shall pay one hundred dollars. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer: *Provided*, That any person who manufactures less than five hundred barrels a year shall pay the sum of fifty dollars.

Rice beer fermented is a fermented liquor made from a substitute for malt. (34 Int. Rev. Rec., 253.)

Ruling in regard to manufacture of small beer. (35 Int. Rev. Rec., 133.)

Root beer, a fermented liquor made from "roots, barks, herbs, sugar, and bread yeast," if it is not similar to weiss beer or to any of the fermented liquors enumerated in section 3339, R. S., is not subject to tax; nor is the special tax of a brewer required to be paid for its manufacture for sale. (T. D. 19383, 1898.)

Special tax is required to be paid for the manufacture and sale of "hop beer" resembling weiss beer. (T. D. 20233, 1898; T. D. 19445.)

Fermented liquor made from malt, or from substitute therefor. (T. D. 892; T. D. 646.)

Beverages under the name of "Hop ale," "Hop tonic," "Maltina," etc. (T. D. 19154.)
"Hop tea tonic." (T. D. 829.)

Second. Manufacturers of stills shall each pay fifty dollars, and twenty dollars for each still or worm for distilling made by him. Any person who manufactures any still or worm to be used in distilling shall be deemed a manufacturer of stills.

SEC. 18 [act of May 28, 1880 (21 Stat., 145).] That subsection second of section thirty-two hundred and forty-four shall not apply to distillers in registered distilleries who manufacture for their own use wooden stills, but each of said distillers shall give notice to the collector of the district in which his distillery is located of each still manufactured before the same is used.

Manufacturers of stills for pharmaceutical and scientific purposes. (22 Int. Rev. Rec., 397; 36 ibid., 285; T. D. (1898), No. 20063.)

A still made for use in the manufacture of vinegar comes under the ruling as to stills not used in the distillation of the spirits, and special tax is not required to be paid thereon.—Ruling 20878 revoked. (T. D. (1900), No 11.)

Liability to special tax of manufacturers of stills of 5-gallon capacity or less, and of stills used for pharmaceutical purposes. Settled ruling, 36 Int. Rev. Rec., 285.

Special taxes.

Brewers.

Manufacturers of stills.

Exception.

Stills of 5 gallons or less. (33 Int. Rev. Rec., 397.) All stills "set up" required to be registered. (Sec. 3258, p. 157.) Ruling in regard to repairing of stills. (35 Int. Rev. Rec., 133.) Separate special tax to be paid on a still for distillation of spirits and on a worm for such distillation. Settled ruling as to a person who is employed by a distiller to manufacture parts of a wooden still. (T. D. No. 21835, 1899.)

The manufacturer of a still, to be used only for pharmaceutical purposes, or for distillation of volatile oils, is not required to pay tax thereon, provided he furnishes the collector evidence, under oath, setting forth the purpose for which the still is to be used. (T. D. 5, Jan. 5, 1900.)

The statutory provision imposing special tax on stills is held not to apply to a still that is shown not to be intended for the production of the spirits defined by the internal-revenue laws. (T. D. 64, Mar. 8, 1900.)

The manufacturer of a worm for use by a rectifier in the redistillation of spirits is required to pay special tax thereon. (T. D. 917, Aug. 16, 1905.)

There is no special tax under these laws on stills for the production of wood alcohol. (T. D. 918, Aug. 26, 1905.)

Tax must be paid on stills and worms manufactured for use in industrial distilleries producing alcohol solely for denaturation. (T. D. 1423, Oct. 2, 1908.)

Drawback on stills. SEC. 10 [act of Mar. 1, 1879 (20 Stat., 327).] Upon all stills manufactured for export, and actually exported, there shall be allowed a drawback, where the tax thereon has been paid, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

See Regulations, No. 29, revised.

Rectifiers. Third. Rectifiers of distilled spirits shall pay two hundred dollars.

Sec. 4, act Mar. 1, 1879 (20 Stat., 327). Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete, and every wholesale or retail liquor-dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying.

Provided, That any person who rectifies, purifies, refines, or manufactures as aforesaid less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, shall pay one hundred dollars.

And provided, That nothing in this section shall be held to prohibit the purifying or refining of spirits in the course of original and continuous distillation through any material which will not remain incorporated with such spirits when the manufacture thereof is complete.

Rectifiers of less than 500 barrels a year. Every person who rectifies, purifies, refines, or manufactures as aforesaid less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, shall pay one hundred dollars.

And provided further, That no officer shall collect any rectifying special tax for rectifying distilled spirits on any premises within 600 feet of a distillery. ^{Act Feb. 18, 1875 (18 Stat., 316).} And every officer who collects any special tax in violation of this *proviso* shall be liable to a penalty of five thousand dollars for each offense. ^{Penalty for collecting special tax.}

Rectifiers or brewers who have paid special tax as "rectifiers or brewers of less than 500 barrels," and who during the same special-tax year desire to increase their product, should make application for a new stamp, of the denomination of \$200 in the case of a rectifier or \$100 in the case of a brewer. On obtaining this new stamp the rectifier or brewer may apply to the Commissioner of Internal Revenue, under act of May 12, 1900, for the redemption of the stamp first issued.

Gin, manufacture of. (12 Int. Rev. Rec., 197.)

Rectifying within 600 feet of a distillery. (Sec. 3266, p. 166; Sec. 3280, p. 172.)

The presence of a filter, consisting of a closely packed pulp through which liquid is forced under pressure, on premises of a wholesale or retail liquor dealer constitutes such dealer a rectifier. (T. D. 19060, 1898.)

Filtering apparatus.—Permitting certain described filtering apparatus in bottling warehouses, but not on premises of wholesale liquor dealers. (T. D. 21106, 1899.)

Liability of persons who mix spirits or liquors of different strengths or different kinds. (10 Int. Rev. Rec., 121.)

The addition of water or the simple mixing of spirits of the same kind, produced at the same distillery at or about the same time, is not regarded as rectification.

The general rule is that a wholesale liquor dealer in his capacity as such may commingle spirits of the same production, quality, and kind, differing in age not more than one year and in proof not more than 10 per cent, without rendering himself liable as a rectifier.

The addition to distilled spirits of any coloring matter or foreign substance which in any way changes the character of the spirits or remains incorporated therein is regarded as rectification. (Regulations No. 1, Revised, Aug. 15, 1907, p. 27; Stark *v.* Nunn, 101 Fed. Rep., 423; T. D. 121.)

Addition of caramel to spirits constitutes rectification. (T. D. 1332.)

A retail liquor dealer who reduces with water a small quantity of whisky (less than 5 gallons) and mixes it with sugar, or other material, keeping it in a demijohn or other receptacle, merely for his own convenience in meeting orders of his customers at his bar, and does not make it a practice to put up the compound in bottles in advance of orders therfor for sale, is not to be regarded as liable to special tax as a rectifier. (T. D. 418, Oct. 5, 1901; T. D. 1014, June 19, 1906.)

Recovering alcohol.—Druggists recovering alcohol previously used in making medicines. (24 Int. Rev. Rec., 282.) ^{U. S. v. Hance (T. D. 1683.) U. S. v. Smith, Kline & French Co. (T. D. 1684.)}

The recovery of alcohol from preparations that are not medicines is rectification. (T. D. 963, Dec. 30, 1905.)

Medicinal compounds.—Special tax as rectifier required for manufacture of alcoholic medicinal compounds which are not so medicated as to be unfit for use as a beverage and for the manufacture of medicinal cordials, flavoring extracts, essences, and soda-water sirups which contain alcohol in excess of the quantity necessary to preserve the ingredients, extract the properties, or cut the oils and hold them in solution. (T. D. 1251, Oct. 12, 1907; T. D. 1255.)

In a genuine medicine the alcohol should not be more than is necessary for the legitimate purposes of extraction, solution, or preservation, and the preparation should contain approximately a U. S. P. dose of some medicinal ingredient of recognized value,

either alone or in combination with other compatible drugs. (T. D. 1510, June 17, 1909.)

Wines.—Wines manufactured from prunes. (T. D. 633.)

“Blackberry wine” and “blackberry cordial,” produced from grapes grown in the United States, fortified with spirits and flavored with blackberry, held to be a product of rectification, but not liable to stamp tax under section 3328, Revised Statutes. (T. D. 495, Mar. 31, 1902.)

Flavoring extracts.—Manufacture of. *Allen v. Liquid Carbonic Co.* (170 Fed. Rep., 315.)

Retail
dealers.

Fourth. [Sec. 18, act of Feb. 8, 1875 (18 Stat., 309), as liquor amended by sec. 4, act of Mar. 1, 1879 (20 Stat., 327).] That retail dealers in liquors shall pay twenty-five dollars.

Every persons who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors.

Wholesale
liquor
dealers.

Wholesale liquor dealers shall each pay one hundred dollars.

Every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise than as hereinafter provided, in quantities of not less than five wine gallons at the same time, shall be regarded as a wholesale liquor-dealer.

If the quantity of malt liquor sold at one time exceeds five gallons, the vendor is a wholesale dealer, although the same is not contained in one package. (*United States v. Clare*, 2 Fed. Rep., 55.)

In prosecutions for selling liquor at wholesale, without payment of special tax, it is not incumbent upon the Government to prove that the gallon measure used by defendant conformed to the legal standard; nor is it necessary to prove that each gallon contained a gallon of proof spirits. (*United States v. Hart*, 28 Int. Rev. Rec., 226.)

Distiller not
wholesale liquor
dealer when.

But no distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale liquor-dealer on account of such sales.

See section 3318a, p. 211.

Clubs. Club owning liquors and selling to members. (*United States v. Wittig*, 2 Low., 466; 22 Int. Rev. Rec., 98; *United States v. Woods*, 24 ibid., 150; *United States v. Rolinger*, 28 ibid., 314; *United States v. Kallstrom et al.*, 33 ibid., 152; *United States v. Giller*, 54 Fed. Rep., 656.)

Every social club that receives orders from its members for alcoholic liquor in any quantity less than five gallons, and furnishes the liquor so ordered and collects pay therefor, “or accepts the consumer’s promise to pay in the future,” sells the liquor to its members and is a retail liquor dealer under the internal-revenue laws, and is required to pay special tax accordingly. (*United States v. The Alexis Club*, U. S. district court, eastern district of Pennsylvania; 98 Fed. Rep., 725; T. D. 8, 1900.)

Clubs or societies collecting money for purchase of liquors for joint use of contributors. (T. D. 1262.)

A social club in which beer is supplied to its members, who help themselves thereto “and throw their contributions into a

"box through a slot," furnishes the beer under conditions constituting sale, and is required to pay special tax. (T. D. 20119, 1898.) But if a club has lockers in which each member places the liquor he desires to drink, the liquor not having been purchased from the club, and no sale is made by the club but each member uses his own liquor, then no special-tax liability is incurred. (T. D. 1311.)

Shipping spirits to be paid for on delivery [C. O. D.]. (United States *v.* Shriver, 31 Int. Rev. Rec., 54; United States *v.* Ott, 31 ibid., 79; United States *v.* Cline, 26 Fed. Rep., 515; Jug Liquor cases, 32 Int. Rev. Rec., 70; Cir. No. 285; Cir. No. 339, modifying No. 285; Dec. No. 180 (1890); 36 Int. Rev. Rec., 13; U. S. *v.* Orene Parker Co., 121 Fed. Rep., 596.)

Delivery by carrier. (United States *v.* Lackey, 120 Fed. Rep., 571.)

C. O. D. sales: When a retail liquor dealer, who has paid the special tax, ships liquors by express on orders received from another town, the express company delivering the goods and receiving and sending to the seller the purchase money, no additional special tax is required. The sale is completed, and the property passes when the goods are delivered to the carrier, the collection and transmission of the price being merely an incident of the express business. (Jones *v.* United States (1909), Circuit Court of Appeals, fourth circuit, Pritchard, J., dissenting, 170 Fed. Rep., 1. (Decisions *contra* cited in dissenting opinion of Judge Pritchard.) U. S. *v.* Adams Express Co., 119 Fed. Rep., 240.)

Ruling as to shipment of spirits to shipper's order, bill of lading attached to draft. (T. D. 1426, Oct. 16, 1908.)

Liability for single sale or occasional acts. (United States *v.* Barnhardt, 20 Int. Rev. Rec., 137; United States *v.* Shouse, 31 ibid., 120; United States *v.* Rennecke, 28 Fed. Rep., 847; Letter to Collector Stearns, 31 Int. Rev. Rec., 141; United States *v.* Jackson, 1 Hughes, 531; Ledbetter *v.* United States, 170 U. S., 606; T. D. 1199, July 11, 1907.)

One is engaged in the business of a retail liquor dealer within the meaning of section 3242, Revised Statutes, if he has liquor on hand to be sold to anyone who applies for it. (United States *v.* Rennecke, 28 Fed. Rep., 847.)

"Canteens" on military reservations. (34 Int. Rev. Rec., 398).

Post exchanges under the complete control of the Secretary of War as governmental agencies not subject to special tax as retail liquor dealers. (Dugan *v.* United States, 34 Ct. Cls. (1899) 458; T. D. 21285.)

Sale of brandy peaches. (United States *v.* Stafford, 20 Fed. Rep., 720; 30 Int. Rev. Rec., 247; 18 ibid., 105; T. D. 19031, 1898.)

No liability for sale of warehouse certificates for whisky in bond. (T. D. 1278, Nov. 19, 1907.)

Selling at same time different packages of liquors, aggregating over five gallons. (10 Int. Rev. Rec., 98; 31 ibid., 317; United States *v.* Hart, 28 ibid., 226; United States *v.* James, 30 ibid., 24, 29; United States *v.* Shouse, 31 ibid., 120.)

Retail liquor dealer not entitled to accept order for a quantity of spirits amounting to 5 gallons or more, even though he fills the order by shipping from time to time less than 5 gallons. (T. D. 655.)

Ruling as to constructive delivery. (Letter to C. W. Moulton, 23 Int. Rev. Rec., 253; T. D. 737.)

Constructive delivery. (De Bary *v.* Souer, 101 Fed. Rep. 425.)

Liability of party for negotiating sales for others. (30 Int. Rev. Rec., 93; United States *v.* Howell, 30 Int. Rev. Rec., 246.) *Agents negotiating sales.*

A person is not liable as a dealer in liquors simply for negotiating sales for others, provided he has neither actual nor constructive possession; but if he has such possession, so that a delivery, either actual or constructive, is made by him, such a delivery

as vests the ownership in the purchaser, he is liable to the tax, even though he himself is not the owner of the liquors. (14 Int. Rev. Rec., 193.)

Taking orders for spirits does not render a person liable as liquor dealer. (U. S. v. Chevalier, 107 Fed. Rep. 434; T. D. 310.)

Selling liquors as pretended agent. (United States v. Herman Rose, 28 Int. Rev. Rec., 274.)

One subscriber ordering and receiving liquors purchased by subscription. (T. D. 1474.)

Societies receiving commissions on sales of liquors induced by them. (T. D. 1486.)

Where goods are shipped with privilege of trial before payment. (T. D. 1492.)

Question of liability of merchants to special tax for ordering liquors for others. (27 Int. Rev. Rec., 234; T. D. 699; T. D. 972; T. D. 1072; T. D. 1249.)

If commission merchants do not buy or sell, but upon receipt of orders from their foreign customers act merely as purchasing agents, they do not involve themselves in special-tax liability. (T. D. 823.)

If a person buys spirits in his own name, and has the same billed to him in his own name, and deals it out from time to time, as called for, he is a retail liquor dealer although the liquor was disposed of without profit to himself, and he purchased it with money advanced by others. (U. S. v. Angell, 11 Fed. Rep., 34.)

Selling liquors on fair grounds. (18 Int. Rev. Rec., 81; T. D. 169.)

Importers who sell spirits in bond are wholesale liquor dealers. (United States v. McCullough, 22 Int. Rev. Rec., 202.)

Commission merchants who, at the request of foreign correspondents, occasionally purchase liquors in quantity, and take charge of shipping the same, and either charge the costs and their commissions upon their books to the account of such correspondents, or draw upon them for the full amount of the purchase price, with costs and commissions, are "wholesale liquor dealers." (Quinn v. Dimond et al. (1896), 72 Fed. Rep., 993.)

An importer of alcoholic liquors or compounds thereof who holds a special-tax stamp as a wholesale liquor dealer at his place of business in one city, and sells and delivers packages of these liquors at a place of storage in another city, without prior constructive delivery to the purchasers at the place where such stamp is held, is required to pay additional special tax and to take out the requisite stamp for that storage place. (T. D. 19281, 1898.) (De Bary et al. v. Dunne, 172 Fed. Rep., 940; T. D. 1550.)

The law does not treat distilled spirits as a drug or medicine, and doctors and druggists are not privileged to sell it as such without first paying the special tax required of dealers in liquor. (United States v. Stafford, 20 Fed. Rep., 720.)

Druggist liable criminally for sales by clerk. (U. S. v. White, 42 Fed. Rep., 138, 1890.)

A practicing physician who prescribed whisky for his patients, furnishing the liquor himself and charging the usual price, is liable. (United States v. Smith, 45 Fed. Rep., 115; T. D. 4; T. D. 806.) But not if spirits or wines are furnished under conditions which do not constitute sale thereof. (T. D. 1355, May 2, 1908.)

Sale of bitters. (29 Int. Rev. Rec., 305; 33 ibid., 17; United States v. Cota, 17 Fed. Rep., 734; 29 Int. Rev. Rec., 249; Hostetter's Bitters, 29 ibid., 273; United States v. Bibb, 33 ibid., 391.)

Bitters sold as a beverage. The fact that the bitters were labeled patent medicine and that the defendant was advised that he might sell the same without a license was no excuse. Parties held liable as liquor dealers. (United States v. Foster, 39 Int. Rev. Rec., 9.)

Physicians and druggists.

Bitters.

The law is not to be avoided by mere deceptive names, and if *Medicinal compounds.*
alcoholic beverages in which the essential ingredient is distilled
spirits, disguised by aromatic or other drugs, are commonly
bought and sold as and for intoxicating beverages, the same are
not to be classed as patent or proprietary medicines, and the
seller is liable to the tax as a retail liquor dealer. (United
States *v.* Wilson; district court, eastern district of Missouri
(Article labeled as an appetiser, 1895), 69 Fed. Rep., 144; Int.
Rev. Rec., 411.; U. S. *v.* Bray, 113 Fed. Rep., 1008; U. S. *v.*
Morfew (1905), 136 Fed. Rep., 491.)

The sale of beer, whisky, or other alcoholic liquor, which has
not been combined with drugs or other medicinal substances,
involves the seller in special-tax liability even though it be sold
under a label as a medicine. (T. D. 19090, 1898.)

Liability for selling alcoholic medicinal compounds. (United
States *v.* Starnes, 35 Int. Rev. Rec., 136; 37 Fed. Rep., 665;
United States *v.* Stubblefield, 40 Fed. Rep., 454; T. D. 1251
(new ruling); Cir. No. 707; T. D. 1255.)

To be classed as medicinal, an alcoholic compound should
carry with each 1-ounce dose approximately a U. S. P. dose of
some drug or drugs of recognized therapeutic value. (T. D. 1510,
June 17, 1909; T. D. 1514.)

Revised list to July 1, 1910, of alcoholic medicinal preparations
for the sale of which special tax is required. Subject to
further revision periodically. (T. D. 1643.)

A fermented liquor made from oranges, sugar, and elder blossoms
is wine within the meaning of the internal-revenue laws,
and the special tax of a liquor dealer is required to be paid for
its sale. (T. D. 19089, 1898.)

Where wine is used for making a "casing fluid for leaf tobacco,"
unless the material added to the wine changes its character so that it is neither a potable liquid nor a liquid coming
under the head of distilled spirits, wine, or malt liquor, special
tax is required to be paid for its manufacture and sale, even
though it be sold only to cigar manufacturers for use in leaf
tobacco. (T. D. 19333, 1898.)

Special tax is not required to be paid for the sale of cider; that
is, the juice of apples, whether unfermented or fermented, and
whether it is "hard cider" (strongly alcoholic) or not, if no
distilled spirits, or wine, or other alcoholic liquor has been
added thereto. (T. D. 20309, 1898; T. D. 1174, May 28, 1907.)

Nothing is cider except the juice of apples, fermented or unfermented.
Imitation cider, mixed with distilled spirits or wine,
is a compound liquor, for the manufacture or sale of which
special tax is required. (T. D. 20097, 1898; U. S. *v.* Lewis,
T. D. 801.)

Concerning the collection of special tax as liquor dealers from
distillers who sell distilled spirits in bottles put up under the
act of March 3, 1897. (Cir. No. 481, Aug. 18, 1897; 43 Int. Rev.
Rec., 318.)

Auctioneer selling liquors. (T. D. 1300.)

Express company selling liquors to secure charges. (T. D.
715.)

Selling liquors by peddlers prohibited. (Cir. No. 143; 22 Int.
Rev. Rec., 37; 22 ibid., 157; T. D. 584; T. D. 951.)

Fifth [Act of Feb. 8, 1875 (18 Stat., 309), as amended
by sec. 4, act of Mar. 1, 1879 (20 Stat. 327).] Retail dealers
in malt liquors. dealers in malt liquors shall pay twenty dollars.

Every person who sells, or offers for sale, malt liquors in
less quantities than five gallons at one time, but who does
not deal in spirituous liquors, shall be regarded as a retail
dealer in malt liquors.

Retail dealers in malt liquors can not retail spirituous liquors
or wines without paying special tax as retail liquor dealers.

No refund of a tax to a R. M. L. D. who becomes a R. L. D. (33 Int. Rev. Rec., 397; T. D. 415.)

Special tax on bottled beer; when not imposed. (Letter to Jos. Schlitz Brewing Co., April 5, 1897; 43 Int. Rev. Rec., 193.)

Dealers in small beer. (T. D. 19154, 1898.) See note under section 3244, first paragraph, page 133.

Liability of express companies. The actual ownership of the property is not essential to fix upon the trafficker the quality of a dealer in liquors. The statute attaches to him the office of a dealer when he "sells or offers for sale malt liquors." (Western Express Co. v. United States, 141 Fed. Rep., 28; T. D. 965.)

Peddling fermented liquors. (26 Int. Rev. Rec., 169; T. D. 494.)

Wholesale dealers in malt liquors. Wholesale dealers in malt liquors shall pay fifty dollars.

Every person who sells, or offers for sale, malt liquors in quantities of not less than five gallons at one time, but who does not deal in spirituous liquors at wholesale, shall be regarded as a wholesale dealer in malt liquors:

Brewers not liable to dealer's tax, when. (§ 3349.) *Provided*, That no brewer shall be required to pay a special tax as a dealer by reason of selling in the original stamped packages whether at the place of manufacture or elsewhere, malt liquors manufactured by him or purchased and procured by him in his own casks or vessels, under the provisions of section thirty-three hundred and forty-nine of the Revised Statutes; but the quantity of malt liquors so purchased shall be included in calculating the liability to brewer's special tax of both the brewer who manufactures and sells the same and the brewer who purchases the same.

And it is hereby provided, That no further collection of special tax as retail dealers in malt liquors shall be made from brewers for selling malt liquors of their own manufacture in the original stamped eighth-barrel package. *

No special tax for sales by fiduciary officer of court, etc. But no special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a person who is not otherwise a dealer in liquors, where such spirits, wines, or liquors have been received by the person so selling as security for or in payment of a debt, or as executor, administrator, or other fiduciary, or have been levied on by any officer, under order or process of any court or magistrate, and where such spirits are sold by such person in one parcel only, or at public auction in parcels not less than twenty wine gallons, nor shall such tax be held to accrue on a sale made by a retiring partner, or the representatives of a deceased partner to the incoming, remaining, or surviving partner or partners

No wholesale dealer's tax on sale of entire stock of retail dealer. of a firm; nor shall the special tax of a wholesale liquor dealer or wholesale dealer in malt liquors be held to apply to a retail dealer in liquors or a retail dealer in malt liquors, because of such retail dealer selling out his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of malt liquors; and section thirty-three hundred and nineteen of the Revised Statutes shall not be held to prohibit a rectifier or liquor dealer from purchas-

ing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as aforesaid.

Sale of spirits, etc., by sheriff. (33 Int. Rev. Rec., 405.)

Brewers shipping bottled beer C. O. D. (33 Int. Rev. Rec., 77.)

A brewer holding a special-tax stamp of the smaller class is not required to pay special tax as a brewer of the larger class until the entire quantity of beer produced by him within the special-tax year amounts to 500 barrels. As soon as the quantities produced month by month within that period amount in the aggregate to 500 barrels he must pay the special tax of a brewer of the larger class for the entire year (\$100). He may then send in his stamp of the smaller class for redemption. (T. D. 19439, 1898.)

Brewers who establish places of storage for bottled beer, and complete sales by deliveries therefrom to purchasers in wholesale quantities, are required to pay special tax as wholesale dealers in malt liquor at every such place. (T. D. 19440, 1898; but see T. D. 21619.)

Where a brewer ships bottled beer marked for delivery to persons who had ordered it, but consigns and waybills the beer in general terms to his agent, instead of shipping it to these persons, sale is made at the time and place of the actual delivery by the agent. (T. D. 21852, 1899; T. D. 1369; T. D. 1426.)

Persons calling themselves agents of brewers in the sale of original stamped packages of beer should furnish abstracts from the books of the brewers, showing how the beer is charged, or billed, and also a statement under oath by the brewers, showing that the beer remains absolutely their property until sold, and that these persons are under their orders and control in making such sales. (T. D. 21019, 1899.)

They must show that the beer remains absolutely the property of the brewers until sold by them on account of the brewers, and not on their own account. (T. D. 21836, 1899.)

A fermented malt liquor, though diluted to such an extent as to be called nonintoxicating, is a beverage for the sale of which special tax must be paid under the internal-revenue laws. (T. D. 21473, 1899.)

The executor of a person who had been a manufacturer of wine is entitled to sell the wine made by his testator at one "business office" in any quantities, small or large, through an auctioneer, without the payment of special tax; but if the testator was not the manufacturer of the wine, the executor or his auctioneer is not entitled to sell the wine without paying special tax therefor, unless he disposes of the entire quantity of wine at a single sale. (T. D. 21648, 1899.)

Executor selling liquor. (T. D. 419.)

Repeal of certain special taxes.—Section 26, act of October 1, 1890, repealed on and after May 1, 1891, special taxes upon dealers in leaf tobacco, retail dealers in leaf tobacco, dealers in tobacco, manufacturers of tobacco, manufacturers of cigars, and peddlers of tobacco.

Special taxes were reimposed upon the above-named occupations, except retail dealers in leaf tobacco and peddlers of tobacco, by the act of June 13, 1898, which were repealed by section 5, act of April 12, 1902, taking effect July 1, 1902.

SEC. 3 [act of Aug. 2, 1886 (24 Stat., 209), as amended by sec. 2 of the act of May 9, 1902 (32 Stat. 193)]. Manufacturers of oleomargarine shall pay six hundred dollars. Every person who manufactures oleomargarine for sale shall be deemed a manufacturer of oleomargarine.

And any person that sells, vends, or furnishes oleomargarine for the use and consumption of others, except to his own family table without compensation, who shall add to

or mix with such oleomargarine any artificial coloration that causes it to look like butter of any shade of yellow shall also be held to be a manufacturer of oleomargarine within the meaning of said Act, and subject to the provisions thereof.

See U. S. v. White & Paller (T. D. 1334); U. S. v. Shipley et al. (T. D. 1504); Zinn Co. v. U. S. (T. D. 1517.)

Oleomargarine manufacturers and dealers.

Wholesale dealers in oleomargarine shall pay four hundred and eighty dollars. Every person who sells or offers for sale oleomargarine in the original manufacturer's packages shall be deemed a wholesale dealer in oleomargarine.

But any manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells only oleomargarine of his own production, at the place of manufacture, in the original packages to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in oleomargarine on account of such sales.

When a broker in oleomargarine is not a wholesale dealer. (32 Int. Rev. Rec., 373.)

Retail dealers in oleomargarine shall pay forty-eight dollars. Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine.

§§ 3232, 3233,
3234, 3235, 3236,
3237, 3238, 3239,
3240, 3241, 3243,
applicable,
pp. 125-132.

And sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, and thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section, and to the persons upon whom they are imposed:

Provided further, That wholesale dealers who vend no other oleomargarine or butterine except that upon which a tax of one-fourth of one per cent per pound is imposed by this Act, as amended, shall pay two hundred dollars; and such retail dealers as vend no other oleomargarine or butterine except that upon which is imposed by this Act, as amended, a tax of one-fourth of one cent per pound shall pay six dollars.

Rulings as to sales of oleomargarine. (32 Int. Rev. Rec., 365, 381.)

The 50 per cent penalty imposed by section 3176, Revised Statutes, does not apply to the taxes imposed by the oleomargarine act. (Schafer v. Craft, 144 Fed. Rep., 907; 153 Fed. Rep., 175; 154 Fed. Rep., 1002. Grier v. Tucker, 150 Fed. Rep., 658; 160 Fed. Rep., 611, T. D. 1455.)

Liability as wholesale dealer. (Judd O. Hartzell v. The United States, T. D. (1900), 2; 83 Fed. Rep., 1002.)

Manufacturers and wholesale dealers may sell oleomargarine only in original stamped packages of not less than 10 pounds.

Exception.

A retail dealer must sell only from original stamped packages in quantities of not more than 10 pounds, packed in new wooden or paper packages marked with his name and address, and the word "Oleomargarine" in large letters printed or branded thereon. (See sec. 6, act Aug. 2, 1886, p. 294.)

A sheriff or other officer who levies upon and sells the oleomargarine belonging to the stock of goods of a retail dealer in oleomargarine is not required to pay special tax therefor, inasmuch as he is acting in his official character, in the discharge of lawful duties. (T. D. 730.)

Retail dealers are not permitted to peddle oleomargarine on the streets. (T. D. 610.)

Liability of agents or brokers receiving and transmitting orders for oleomargarine to manufacturers. Unless sales are fully completed at the factory to the persons ordering, special tax is required to be paid at the place of delivery. (T. D. 18978, 1898.)

Parties selling oleomargarine are liable to special tax, although they are ignorant that the substance is oleomargarine. (Charge of Judge Jackson in Hubbard & Paul v. Collector Gilkeson, U. S. circuit court, district of West Virginia. T. D. 19246, 1898; Eagle v. Nowlin, collector. Decision of Judge Baker (1899), 94 Fed. Rep., 646, T. D. 21228.)

Dealers in colored and uncolored oleomargarine.—Where a person pays special tax as a dealer in uncolored oleomargarine and thereafter desires to sell also colored oleomargarine, the only course for him to pursue is to pay the special tax at the higher rate for the entire period to the close of the year, and take out the requisite special-tax stamp, and then send in for redemption the special-tax stamp taken out at the lower rate. (T. D. 526.)

Sec. 4 [Act of May 9, 1902 (32 Stat., 195.)] * * *

That special taxes are imposed as follows:

Manufacturers of process or renovated butter shall pay fifty dollars per year and manufacturers of adulterated butter shall pay six hundred dollars per year. Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

Coopersville Cooperative Creamery v. Lemon. (163 Fed. Rep., 145; T. D. 1371.)

Wholesale dealers in adulterated butter shall pay a tax of four hundred and eighty dollars per annum, and retail dealers in adulterated butter shall pay a tax of forty-eight dollars per annum. Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter. And sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, and thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special

taxes imposed by this section and to the person upon whom they are imposed.

* * * *

Manufacturers
of filled cheese.

SEC. 3. [Act of June 6, 1896 (29 Stat., 253).]

Manufacturers of filled cheese shall pay four hundred dollars for each and every factory per annum. Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled

Wholesale
dealers in filled
cheese.

cheese. Wholesale dealers in filled cheese shall pay two hundred and fifty dollars per annum. Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's packages for resale, or to retail dealers as hereinafter defined, shall be deemed a wholesale dealer in filled cheese. But any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

Retail dealers.

Retail dealers in filled cheese shall pay twelve dollars per annum. Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese, and sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section and to the persons, firms, or corporations upon whom they are imposed: *Provided*, That all special taxes under this Act shall become due on the first day of July in every year, or on commencing any manufacture, trade, or business on which said tax is imposed. In the latter case the tax shall be reckoned proportionately from the first day of the month in which the liability to the special tax commences to the first day of July following.

Penalties.

SEC. 4. That every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than four hundred dollars and not more than three thousand dollars; and every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than two hundred and fifty dollars nor more than one thousand dollars;

and every person, firm, or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than forty nor more than five hundred dollars for each and every offense.

SEC. 36. [Act of June 13, 1898 (30 Stat., 448).] That every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of twelve dollars per annum, the same to be paid and posted in accordance with the provisions of sections thirty-two hundred and forty-two and thirty-two hundred and thirty-nine of the Revised Statutes, and subject to the fines and penalties therein imposed for any violation thereof.

Manufacturers
and packers of
mixed flour.

Penalties.

SEC. 3245. [Obsolete.]

SEC. 3246. [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327).] Nothing in this chapter shall be construed to impose a special tax upon vintners who sell wine of their own growth, or manufacturers who sell wine produced from grapes grown by others, at the place where the same is made or at the general business office of such vintner or manufacturer: *Provided*, That no vintner or manufacturer shall have more than one office for the sale of such wine that shall be exempt from special tax under this act; nor shall any special tax be imposed upon apothecaries as to wines or spirituous liquors which they use exclusively in the preparation or making-up of medicines.

Special tax not
to apply to vint-
ners nor apothe-
caries in certain
cases.

Limitation of a druggist's right to sell liquors without paying special tax. (34 Int. Rev. Rec., 157.)

An apothecary, who bona fide uses spirituous liquors in the preparation of a medicine to be used as such and not as a beverage, does not violate section 3242, by not paying the special tax required of a retail liquor dealer. (United States *v.* Calhoun, 39 Fed. Rep., 604.)

Druggists compounding medicines. (T. D. 933; T. D. 1514.)

The fact that a person is an authorized liquor dealer under the internal-revenue laws does not prevent him from engaging also in the compounding of medicines; and if he does so, using spirits in combination with roots, herbs, or drugs, and sells the compound only under a label specifying the diseases for which it is held out as a remedy, he is an apothecary within the exempting provision of section 3246. (T. D. 19412, 1898.)

The exemption from special tax granted druggists for use of spirits or wine by this section relates only to medicines in which the spirits or wine used have been changed in nature and made clearly medicinal by the addition of drugs. (T. D. 1019.)

What alcoholic compounds may be classed as medicinal. (T. D. 1510, June 17, 1909.)

Medicinal com-
pounds.

A manufacturer of medicinal compounds, by the use of tax-paid spirits in combination with drugs, is entitled to the exemption when he sells such compounds only under labels specifying the diseases for which they are held out as remedies, and his use of a pharmaceutical still in the preparation of these medicines does not involve him in liability under the internal-revenue laws. (T. D. 19347, 1898.)

A compound of medicinal roots and distilled spirits, if held out not merely as a remedy for disease, but also as "bitters for mixed drinks," is not to be regarded as made in good faith for

Wine.

medicinal use only, and the manufacturer who sells it under such a label is not entitled to the exemption, and is required to pay special tax as a rectifier and liquor dealer. (T. D. 19442, 1898.)

Where grapes are pressed at one place and the juice is then carried to another place and there fermented, the latter is the place of manufacture of the wine, and the manufacturer is there permitted by the provisions of section 3246 to sell it without paying special tax. (T. D. 19410, 1898.)

A person who sells blackberry wine (a fermented liquor made from blackberry juice) is required to pay special tax as a liquor dealer for selling the wine, unless he is the manufacturer of it and has made it from berries grown by himself or gathered wild by himself or by persons in his employ, and the wine is sold by him only at the place of manufacture or at his one "general business office." (T. D. 20366, 1898.)

A person who buys elderberries and makes wine therefrom is not within the exempting provision, and is required to pay special tax for selling such wine, even when he sells it at the place of manufacture. (T. D. 20541, 1899.)

CHAPTER FOUR.

DISTILLED SPIRITS.

Sec.	Sec.
3247. Distiller, definition of.	3270. Apparatus and fastenings.
3248. Distilled spirits, definition of.	3271. Distillery warehouses.
3249. Standard of proof spirits; instruments, etc.	[3271a.] Use of warehouse by successors in certain cases.
3250. Gallon, definition of.	3272. When a warehouse becomes unsafe.
3251 (amended). Tax on distilled spirits.	3273. Storekeepers have charge under direction of collector.
[3251a.] Tax on spirits; lien.	3274. Custody and management of warehouses.
[3251b.] Alcoholic compounds from Porto Rico.	3275. Distiller to keep distillery accessible; penalty.
[3251c.] Manufacturer of sorghum sugar authorized to remove spirits in bond, free of tax, for use in manufacture of sugar from sorghum. Act March 3, 1891.	3276 (amended). Authority of revenue officers to enter distilleries. Obstructing officer; penalty.
3252. Adding substances to create fictitious proof; penalty.	3277. Distillers and rectifiers to furnish facilities for examination; penalty.
3253. Tax on spirits removed without deposit in warehouse; assessment.	3278. Officers can break up ground or walls in order to examine.
3254. Products of distillation containing spirits taxable.	3279. Signs to be put up by distillers and rectifiers; penalty for neglect and for using false signs, etc.
3255 (amended). Brandy made from apples, peaches, or grapes, etc., exemptions.	3280. Distillers not to carry on business until the law is complied with, nor within 600 feet of a rectifying establishment.
[3255a.] Distilleries of 30 gallons capacity or less; exemptions.	[3281.] Superseded by section 16, act of February 8, 1875. Carrying on distilling without giving bond, etc.; penalty.
3256. Evading tax; penalty.	[3281a.] Arrest of persons operating illicit distillery.
3257. Distiller defrauding or attempting to defraud; penalties.	3282 (amended). Vinegar establishments; penalty.
3258. Registry of stills; penalties.	3283. No process for distilling between 11 p. m. of Saturday and 1 a. m. of Monday; penalty.
3259. Notice of intention to carry on business of distiller or rectifier; penalty.	3284. Using material or removing spirits in absence of storekeeper; penalty.
3260 (amended). Distiller's bonds; penalty.	3285 (amended). Emptying fermenting tubs.
[3260a.] Refusal to approve bond in certain cases.	3286 (amended). Drawing off water, cleansing worm-tub, etc.; penalty.
3261. Bond not to be approved until law is complied with; penalty.	3287 (amended). Removal of spirits to warehouse.
3262 (amended). Distiller must be owner in fee-simple, or have written consent of owner, etc.	3288. Tax-paid spirits not to remain on distillery premises.
3263. Plan of distillery.	3289. Forfeiture of unstamped packages.
3264 (amended). Surveys.	3290. Gauger employing distiller, etc., to use brands or perform his duties; penalty.
3265. Notice by manufacturer of a still. Setting up a still without permit; penalty.	
3266. Distilling on certain premises prohibited; penalty.	
3267. Receiving-cisterns.	
3268. Breaking locks, gaining access to cisterns, etc.; penalty.	
3269. Furnaces, tubs, doublers, worm-tanks; penalty.	

- Sec.
3291. Gauger's returns.
 3292. Fraudulent gauging, etc.; penalty.
 3293 (amended). Distiller's entry of deposit in warehouse; warehousing bonds.
 [3293a.] Warehousing and transportation bonds.
 3294 (amended). Withdrawal from warehouse.
 [3294a.] Allowance for leakage; spirits may be regauged, etc.
 [3294b.] Act March 3, 1899. Allowance for loss.
 51-59. Act of Aug. 28, 1894. General bonded warehouses for distilled spirits, other than fruit brandy.
 Acts of March 3, 1877, and October 18, 1888. Special bonded warehouses for fruit brandy.
 3295 (amended). Gauging, stamping, and branding spirits removed from warehouse.
 3296. Removal, concealment, etc., of spirits contrary to law; penalty.
 3297 and [3297a.] Alcohol withdrawn for scientific purposes; penalty.
 3298. Power of officers to detain packages forty-eight hours.
 3299. Forfeiture of spirits unlawfully removed from distillery.
 3300. Storekeeper unlawfully removing spirits, or allowing same to be removed, etc.; penalty.
 3301 (amended). Storekeepers' warehouse books and returns.
 3302. Storekeepers to have charge of distillery and keep account of materials, etc.
 3303. Distillers' books.
 3304. Books to be open to inspection and preserved two years.
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 3307 and 3308. Distillers' returns.
 3309 (amended). Monthly examination of distiller's returns, assessment, etc., capacity tax.
 [3309a.] Relief from assessments for deficiencies, etc., in certain cases.
 [3309b.] Assessments to be at rate of tax imposed by act August 28, 1894.
 3310 (amended). Commencement and suspension of work; penalties.
 3311. Reduction of capacity; penalty for tampering with locks, etc.
 3312 and 3313. Stamps.
 3314 (amended). Accountability for stamp books; export stamps.
 3315 (amended). Restamping spirits, fermented liquors, tobacco, cigars, etc., when stamps are lost or destroyed.
- Sec.
3316. Officer issuing or permitting use of stamps, contrary to law; penalty.
 [3316a.] Imitation stamps; penalty.
 3317 (amended). Rectifiers' returns; rectifiers intending to defraud; penalty.
 [3317a.] (amended). Rectifier's notice of intention to rectify.
 3318 (amended). Rectifiers' and wholesale dealers' books and transcripts; penalties.
 [3318a.] Distiller required to keep book.
 3319. Purchase of quantities greater than 20 gallons for many persons other than, etc.; penalty.
 3320. Gauging and stamping rectified spirits.
 3322. Filling blanks and affixing and varnishing stamps.
 3323 (amended). Spirits drawn into new packages to be gauged and branded; forfeiture.
 3324. Stamps and brands to be effaced from empty casks; penalties.
 3325. Buying or selling spirit casks having inspection marks; penalty.
 3326. Changing stamps, shifting spirits, etc.; penalty.
 3327. Removal within certain hours from distillery or rectifier's premises; penalty.
 3328. Tax on imitation wines; counterfeiting or reusing stamps; penalties.
 3329 (amended). Drawback on spirits.
 3330 (amended). Exportation of spirits withdrawn from bonded warehouses; relanding; penalties.
 [3330a.] Transportation bond may be taken; change of package.
 [3330b.] Act of December 20, 1879. Allowance for loss during transportation.
 3331. Release of distillery before judgment, in what cases.
 3332 (amended). Stills, etc., to be destroyed in certain cases.
 3333. Burden of proof.
 3334 (amended). Spirits sold under judicial process subject to tax. Provision where spirits will not sell for price equal to tax.
 Sections 11, 12, and 13, act March 1, 1879; penalties. Imported liquor stamps, etc.
 Act October 1, 1890, as amended by act of June 7, 1906. Fortification of wines.
 Act of March 3, 1897. Bottling of distilled spirits in bond.
 Act June 7, 1906. Denatured alcohol.
 Act March 2, 1907. Amendatory of the denatured alcohol act.

SEC. 3247. Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

See section 3282 as to vinegar makers, page 175.

To make one in possession of a still a distiller because he keeps mash, wort, or wash, the mash, wort, or wash must be such as will produce spirits on distillation. (United States v. House and Lot No. 3 Abattoir Place; 25 Int. Rev. Rec., 319.)

Special tax on distillers repealed. (Act of June 6, 1872.)

A corporation may carry on the business of distilling. Also, meaning of the word "person" in this chapter. (15 Op. Atty. Gen., 230; 23 Int. Rev. Rec., 141.)

SEC. 3248. Distilled spirits, spirits, alcohol, and alcoholic spirit, within the true intent and meaning of this act, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

Distilled spirits, definition of.

Under the internal-revenue laws the tax on spirits attaches as soon as they come into existence, and must be paid by the manufacturer, even in case of their destruction, unless the circumstances on which here lies for exemption come within the particular description in some one of the remedial statutes. (Greenbrier Distillery Co. v. Johnson, 88 Fed. Rep., 638.)

SEC. 3249. Proof spirit shall be held to be that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (.7939) at sixty degrees Fahrenheit. And for the prevention and detection of frauds by distillers of spirits, the Commissioner of Internal Revenue may prescribe for use such hydrometers, saccharometers, weighing and gauging instruments, or other means for ascertaining the quantity, gravity, and producing capacity of any mash, wort, or beer used, or to be used, in the production of distilled spirits, and the strength and quantity of spirits subject to tax, as he may deem necessary; and he may prescribe rules and regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits.

Standard of proof spirits; prevention of frauds.

Meters. (Tice v. United States, 99 U. S., 286; Sausser v. United States, 9 Ct. Cls., 338; 11 ibid., 538; Finch v. United States, 12 Ct. Cls., 364; 102 U. S. (12 Otto), 269; 26 Int. Rev. Rec., 410.)

By the act of June 6, 1872 (17 Stat., 239), all the provisions of the act of July 20, 1868, touching meters were repealed.

On the 1st of May, 1892, the method of gauging of spirits by rod, theretofore used, was changed to a weighing system, by

which the number of wine gallons contents is determined by the weight of the package. Weighing beams are furnished for the use of distilleries and rectifying houses, and their use made obligatory, except at fruit distilleries of a production of less than 10,000 proof gallons during the season, and at rectifying houses rectifying less than 5,000 proof gallons of spirits annually. (Gaugers' Weighing Manual, 1906.)

Weighing spirits: Commissioner's annual report (1892). (38 Int. Rev. Rec., 13.)

Circular No. 218, August 1, 1879, authorizes the outage of packages of less than 63 gallons capacity to be 1 gallon where Corey's apparatus for aging whisky and other spirits in distillery warehouses is used, and modifies Circular No. 180 accordingly. (25 Int. Rev. Rec., 245.)

See Gaugers' Manual, 1906, for rule applicable to all apparatus for aging whisky, which has been approved by the commissioner.

The Internal Revenue Gaugers' Manual, 1906, embraces regulations and instructions and tables prescribed by the Commissioner of Internal Revenue by virtue of section 3249, Revised Statutes.

What is the meaning of the term "Whisky" under the pure-food act, and the proper regulations for branding various kinds of whisky under the internal-revenue act. (Decision by President Taft, Dec. 27, 1909.)

Gallon as used
in sales, definition of.

SEC. 3250. In all sales of spirits a gallon shall be held to be a gallon of proof spirit, according to the standard prescribed in the preceding section, set forth and declared for the inspection and gauging of spirits throughout the United States.

See definition of gallon, as relates to fermented liquors, in section 21, act of March 1, 1879. (Sec. 3339a.)

Tax on distilled
spirits.

Repealed by Stat., 339].
sec. 48, act of
Aug. 28, 1894.

Obsolete.

SEC. 3251 [as amended by sec. 1, act of Mar. 3, 1875 (18 Stat., 339)]. [There shall be levied and collected on all distilled spirits produced in the United States on which the tax prescribed by law has not been paid, a tax of ninety cents on each proof gallon, or wine gallon when below proof, to be paid by the distiller, owner, or person having possession thereof before removal from the distillery bonded warehouse: *Provided*, That distilled spirits lawfully deposited in a distillery bonded warehouse prior to the first day of August, eighteen hundred and seventy-two, may be withdrawn on payment of the taxes thereon at the rate, within the time, and in the manner provided by law at the time of such deposit.]

The tax on such spirits shall be collected on the whole number of gauge or wine gallons when below proof, and shall be increased in proportion for any greater strength than the strength of proof spirit, as defined in this title; [and any fractional part of a gallon amounting to one-half gallon or over in a cask or package shall be taxed as a gallon, and any fractional part of a gallon less than one-half gallon in any cask or package shall be exempt from tax.] Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom, and the tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the

Lien.

stills, vessels, fixtures, and tools therein, the lot or tract of land whereon the said distillery is situated, and on any building thereon from the time said spirits are in existence as such until the said tax is paid.

Part in brackets repealed by act of August 28, 1894. Fractional parts of a gallon. (Sec. 3251a.)

The stockholders of a corporation engaged in operating a distillery are "persons interested in the use of the distillery," within the meaning of section 3251, which declares that every proprietor and possessor, "and every person in any manner interested in the use of² a distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(United States *v.* Wolters et al. (1891), southern district of California, 46 Fed. Rep., 509. United States *v.* Howard, 11 Int. Rev. Rec., 119.)

[3251a.] SEC. 48 [act of Aug. 28, 1894 (28 Stat., 509)]. Tax on distilled spirits.
That on and after the passage of this act there shall be levied and collected on all distilled spirits in bond at that time, or that have been or that may be then or thereafter produced in the United States, on which the tax is not paid before that day, a tax of one dollar and ten cents on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon: *Provided*, That in computing the tax on any package of spirits all fractional parts of a gallon, less than one tenth, shall be excluded.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe and furnish suitable stamps denoting the payment of the internal-revenue tax imposed by this section; and until such stamps are prepared and furnished, the stamps now used to denote the payment of the internal-revenue tax on distilled spirits shall be affixed to all packages containing distilled spirits on which the tax imposed by this section is paid; and the Commissioner of Internal Revenue shall, by assessment or otherwise, cause to be collected the tax on any fractional gallon contained in each of such packages as ascertained by the original gauge, or regauge when made, before or at the time of removal of such packages from warehouse or other place of storage; and all provisions of existing laws relating to stamps denoting the payment of internal-revenue tax on distilled spirits, so far as applicable, are hereby extended to the stamps provided for in this section.

That the tax herein imposed shall be paid by the distiller of the spirits, on or before their removal from the distillery or place of storage, except in case the removal therefrom without payment of tax is authorized by law; and (upon spirits lawfully deposited in any distillery warehouse, or other bonded warehouse, established under internal-revenue laws) within eight years from the date of the original entry for deposit in any distillery warehouse, or from the date of original gauge of fruit brandy depos-

Fractional gallons.

Stamps.

Collection of the tax.

Laws applicable.

Tax to be paid by the distiller within eight years.

ited in special-bonded warehouse, except in case of withdrawal therefrom without payment of tax as authorized by law.

Apple brandy included in term distilled spirits (U. S. v. Ridenour (1902), 119 Fed. Rep., 411).

AN ACT To impose a tax upon alcoholic compounds coming from Porto Rico, and for other purposes. Approved February 15, 1909. (35 Stat., 594.)

Bay rum from
Porto Rico.

[3251b.] *That upon bay rum, or any article containing alcohol, hereafter brought from Porto Rico into the United States for consumption or sale there shall be paid a tax on the spirits contained therein of one dollar and ten cents per proof gallon, to be collected at the port of entry by the collector of internal revenue of the district in which the port is located. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such rules and regulations as may be necessary to carry this Act into effect.*

Regulations February 15, 1909. (Cir. 734; T. D. 1462.)

Rates of tax on spirits under the different laws which have been in force.

	Tax per gallon.	Acts imposing tax.	Acts repealing tax.	Length of time rates were in force.
Spirits distilled from whatever materials.	\$0.20	July 1, 1862	Mar. 7, 1864	18
Do.	.60	Mar. 7, 1864	June 30, 1864	4
Spirits distilled from whatever materials, except grapes.	1.30	June 30, 1864	Dec. 22, 1864	6
Spirits distilled from whatever materials, except grapes, to Apr. 1, 1865, and from whatever materials, except apples, grapes, and peaches, after Apr. 1, 1865.	2.00	Dec. 22, 1864	July 20, 1868	43
Spirits distilled from grapes.	.25	June 30, 1864	Mar. 3, 1865	9
Do.	.50	Mar. 3, 1865	July 13, 1866	17
Spirits distilled from apples or peaches.	1.50	do.	do.	17
Spirits distilled from apples, grapes, or peaches.	2.00	July 13, 1866	Mar. 2, 1867	6
Spirits distilled from apples or peaches.	2.00	Mar. 2, 1867	July 20, 1868	17
Spirits distilled from grapes.	1.00	do.	do.	17
Spirits distilled from whatever materials.	.50	July 20, 1868	June 6, 1872	48
Do.	.70	June 6, 1872	Mar. 3, 1875	31
Do.	.90	Mar. 3, 1875	Aug. 28, 1894	234
Do.	1.10	Aug. 28, 1894	do.	do.

The act of July 1, 1862, went into operation September 1, 1862.

The act of June 30, 1864, provided that a tax of \$1.50 per gallon should be levied and collected on all distilled spirits, except brandy distilled from grapes, from July 1, 1864, to February 1, 1865; on and after February 1, 1865, the tax should be \$2 per gallon.

The act of December 22, 1864, provided that the tax of \$2 per gallon should take effect January 1, 1865, instead of February 1, 1865.

So far as the other acts referred to relate to the tax on spirits, they went into operation immediately on their passage, except the following: Act of March 3, 1865, took effect April 1, 1865; act of July 13, 1866, took effect September 1, 1866; act of June 6, 1872, took effect August 1, 1872.

The act of July 20, 1868, made the tax 50 cents per gallon, to be paid by stamps; but there was imposed on the distiller by that act an additional tax on his product of \$4 per barrel of 40

proof gallons, which made the tax really 10 cents per gallon additional, or 60 cents per gallon. There was also a tax on the grain-mashing capacity of the distillery, and a further requirement of reimbursement by the distiller of the sums paid by the Government for gaugers' fees and storekeepers' salaries, altogether amounting to about 7 cents per gallon of the aggregate product of spirits, thus making the whole tax charged upon the distiller about 67 cents per gallon.

By the act of June 6, 1872, taking effect August 1, 1872, the barrel and grain capacity taxes and the reimbursement provision were repealed, and the tax was made 70 cents per gallon, being only an actual addition of about 3 cents per gallon. By the act of March 3, 1875, increase was made to 90 cents per gallon. August 28, 1894, the tax was again increased to \$1.10 per gallon.

Stamps first required in payment of tax on spirits by the act of July 20, 1868 (15 Stat., 125), and went into use November 2, 1868. (Circular of Sept. 17, 1868.)

The act of Congress approved July 20, 1868, imposing a tax on distilled spirits, is not unconstitutional. The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of Congress in the imposition of taxes of this character is that they shall be "uniform throughout the United States." (United States *v.* Singer, 15 Wall., 111; Same *v.* Van Buskirk, 15 Wall., 123.)

Exemptions from tax.—Alcohol withdrawn for scientific purposes. (Sec. 3297, page 197.)

Spirits used in the fortification of sweet wine. (Page 228.)

Spirits used in the manufacture of sugar from sorghum. (Page 154.)

Spirits purchased for the United States for Government use. (Sec. 3464, p. 367.)

Spirits denatured in accordance with the denatured alcohol act of June 7, 1906, amended. (Page 239.)

Theory of Government supervision over distilleries. (United States *v.* Parker, Mason & Co. et al., 21 Int. Rev. Rec., 245.)

Persons having interest in distillery liable. (United States *v.* Howard, 11 Int. Rev. Rec., 119.)

Lien can not be divested by transfer of title. (Milan Distilling Co. *v.* Tillson, collector, 26 Int. Rev. Rec., 5.)

The soakage of spirits into distiller's packages, not being included in the basis of computation, is not a part of the quantity upon which the tax is levied, and, consequently, when extracted from the empty barrels, it is spirits on which the lawful tax has not been paid, and is subject to taxation. (Corning & Co. *v.* Hunter, collector, U. S. circuit court of appeals (1898); 86 Fed. Rep., 913; T. D. 19191.)

Recovery of spirits from empty packages in bottling warehouses. (Cir. No. 662; T. D. 818.)

Reclaiming spirits from empty spirit packages. (T. D. 1608; T. D. 1627.)

A corporation may carry on the business of distilling in its corporate capacity. (15 Op. Atty. Gen., 230; 23 Int. Rev. Rec., 141.)

Stockholders in a distilling company individually liable for taxes due from the corporation. (15 Op. Atty. Gen., 559; 23 Int. Rev. Rec., 141.)

Municipal corporations engaged in distilling liable to tax. (Salt Lake City *v.* Hollister, collector, 118 U. S., 256; 32 Int. Rev. Rec., 158.)

Payment of tax on forfeited spirits by the marshal out of proceeds of sale (sec. 3458) discharges liability of sureties on distillers' warehousing bond for tax. (United States *v.* Ulrici, 111 U. S., 38; 30 Int. Rev. Rec., 111.)

Primarily the distiller is liable for the taxes due on the spirits distilled and, in case of default, his sureties are also jointly liable for the same. The tax must be paid in the name of the distiller,

and the stamp, which is in the nature of a receipt, can only be issued to him. (*Harkins v. Williard*, 146 Fed. Rep., 703; T. D. 1030.)

The laws imposing taxes on distilled spirits are coextensive with jurisdiction of United States. (Sec. 3448, p. 356.)

Domestic whisky returned from abroad. (26 Int. Rev. Rec., 50; 27 ibid., 333.)

Domestic spirits exported from the United States subject to rate of duty equal to internal-revenue tax upon reimportation of same into this country. (See sec. 2500.)

Where there is presumptive evidence that it was the intention of the parties to return the spirits to United States, entry under section 2500 not allowed. (35 Int. Rev. Rec., 358.)

[For opinion of Attorney General as to what constitutes an exportation within contemplation of law see references under sec. 3330.]

Domestic spirits returned to the United States and *not admitted under section 2500 as reimported spirits* subject to *internal-revenue tax* on full quantity contained in packages at time of withdrawal from distillery warehouse.

The location of a distillery in Indian Territory on land where title is extinct is in contravention of law. (22 Op. Atty. Gen., 232; T. D., 20162.)

Bay rum from Porto Rico. (T. D. 404; *Newhall v. Jordan* (1906) 149 Fed. Rep., 586; *Anderson v. Newhall* (1908) C. C. A. 161 Fed. Rep., 906; *Roche v. Jordan*, 175 Fed. Rep., 234, certified to U. S. Supreme Court.

[SEC. 3251c.] [*Act of Mar. 3, 1891 (26 Stat., 1050). An act making appropriations for the Department of Agriculture.*] * * * That any manufacturer of sugar from sorghum may remove from distillery warehouses to factories used solely for the manufacture of such sugar from

^{Withd}_{free of tax of} ^{drawal}_{spirits used in} sorghum distilled spirits in bond free of tax, to be used solely in such manufacture of sugar from sorghum; that all distilled spirits removed as herein authorized shall be

of an alcoholic strength of not less than one hundred and sixty per centum proof, and may be removed, stored, and used in the manufacture of sugar from sorghum, and when so used may be recovered by redistillation in the sugar factory of such sugar manufacturer under such bonds, rules, and regulations for the protection of the revenue and the accomplishment of the purposes herein expressed as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe.

Penalty.

Any person who removes or uses distilled spirits in violation of this provision, as [or] the regulations issued pursuant thereof, shall, on conviction thereof, be fined not less than one thousand dollars nor more than five thousand dollars for each offense, and the spirits and the premises on which such spirits are used shall be forfeited to the United States. * * *

^{Adding sub-}_{stances to create fictitious proof;} SEC. 3252. Every person who adds or causes to be added any ingredient or substance to any distilled spirits before the tax is paid thereon, for the purpose of creating a fictitious proof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each cask or package so adulterated, and imprisoned not less than three months nor more than two years; and every such

cask or package, with its contents, shall be forfeited to the United States.

SEC. 3253. The tax upon any distilled spirits removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time, when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distress. But this provision shall not exclude any other remedy or proceeding provided by law.

Tax on spirits removed without deposit in warehouse; assessment.

This section also applies to fruit distillers who sell spirits without payment of tax.

(See also sec. 8, act of March 3, 1877, providing similar remedy in certain cases as to brandy made from apples, peaches, or grapes, p. 194.)

SEC. 3254. All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

SEC. 3255 [*as amended by act of June 3, 1896 (29 Stat., 195), and act of Feb. 4, 1901 (31 Stat., 759), and act of Mar. 2, 1911 (36 Stat., 1014).*] The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, plums, pawpaws, persimmons, prunes, figs, or cherries from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so; *Provided, That where, in the manufacture of wine, artificial sweetening has been used the wine or the fruit pomace residuum may be used in the distillation of brandy, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so."*

Products of distillation containing spirits.

Brandy made from apples, grapes, etc.

Cir. No. 592. Feb. 23, 1901. (T. D. 288.)

Act of March 3, 1877, relating to the production of grape brandy (special bonded warehouses), p. 192.

Act of October 18, 1888, relating to production of brandy made from apples or peaches, p. 195.

Distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, prunes, figs, or cherries are not required to have a sign, furnish a plan of the distillery, or provide a warehouse. They are exempted from certain requirements as to the fermenting period and fermenting tubs and other general provisions of the law as set forth in the regulations on the subject. (See Regulations No. 7, Revised, pp. 204-205.)

Internal-revenue tax on all fruit brandy is due on the 10th of the month following the month of production.

Assessing tax on fruit brandy. (Cir. No. 657, T. D. 782; T. D. 835.)

Collection of tax on fruit brandy. (Cir. No. 670. June 3, 1905. T. D. 900.)

Distilleries having a daily spirit-producing capacity of thirty gallons proof spirits or less; exemptions.

[SEC. 3255a.] [Sec. 5 of the act of Mar. 1, 1879 (20 Stat., 327).] * * * The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers whose distilleries have a daily spirit-producing capacity of thirty gallons of proof spirits, or less, from such of the provisions of existing law in regard to grain distilleries which require the process of distillation to be carried on through continuous closed vessels and pipes, or which require the cisterns to be connected with the outlet of the worm or condenser by suitable pipes or other apparatus or which require certain clear spaces about the cisterns and other vessels of the distillery, or which require the distillers to have or furnish a plan of the distillery, as he may deem proper.

Under the authority given by this section distillers whose distilleries have a daily spirit-producing capacity of 30 gallons of proof spirits or less, as estimated and determined by a survey made according to law, are exempted—

(1) From so much of the provisions of section 3263 as require a plan of the distillery to be had or furnished by the distiller;

(2) From so much of the provisions of sections 3267 and 3269 as require that the open or clear spaces above, below, or around the receiving cisterns, wood still, doubler, and worm tanks shall be of any greater extent or dimensions than is necessary to afford a clear, distinct, and uninterrupted view around, above, and beneath each of said vessels or utensils.

Evading tax; penalty. SEC. 3256. Whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits, in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded or attempted to be evaded.

(See sec. 3296, p. 197.)

The penalty of double the amount of the tax imposed by section 3256 is not assessable, and should not be imposed and collected by a collector, but should be recovered by indictment or other form of action. (T. D. 858.)

Distiller defrauding or attempting to defraud United States of tax on spirits.

SEC. 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

See section 3281 and citations thereunder. See section 3230, as to nolle prosequi of prosecutions under section 3257.

It is sufficient in the indictment to allege the offense in the language of the statute where this so defined the act or acts constituting the offense as to give to the defendant information of the nature and cause of the accusation. (United States v. Staton, 25 Int. Rev. Rec., 10.)

Information under sections 3257, 3281, 3305, 3453, and 3456, Revised Statutes. No proof to overcome the denials in the

Forfeiture.

Penalty.

answer. *United States v. One Distillery et al.* (Fruitvale Wine & Fruit Co., 174 U. S., 149.)

It was not necessary to aver in the information that the distilled spirits found on the claimant's distillery premises and seized were distilled by him or were the product of his distillery, or that the distillery apparatus was wrongfully used.

The only necessary elements are that the person shall be engaged in carrying on the business of a distiller, and that he shall defraud or attempt to defraud the United States of the tax on the spirits distilled by him. The forfeiture is to be enforced by a civil suit in rem and the fine and imprisonment in a criminal proceeding. (*Coffey v. United States*, 32 Int. Rev. Rec., 39; 116 U. S., 427.)

One who has been fined and imprisoned under section 3257, for illicit distilling, is estopped to claim as his own the distillery and spirits forfeited thereby; and such a conviction is not a bar to the proceeding in rem required by section 3453 to declare and perfect the forfeiture. (*United States v. Three Copper Stills, etc.* (1890), 47 Fed. Rep., 495.)

The proceeds of forfeited spirits can not be applied to relieve the distiller from payment of tax. (*Harkins v. Williard*, circuit court of appeals, 1906; 146 Fed. Rep., 703; T. D., 1030.)

The provisions of this section apply to fruit distillers. (*United States v. Ridenour*, 119 Fed. Rep., 411.)

SEC. 3258. Every person having in his possession or ^{Registry of stills, etc.} custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner of Internal Revenue. Stills and distilling apparatus shall be registered immediately upon their being set up.

Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited. ^{Forfeiture.}

And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered, shall pay a penalty of five hundred dollars, and shall be fined not less than one hundred dollars, nor more than one thousand dollars, and imprisoned for not less than one month, nor more than two years. ^{Penalty.}

The requirements of this section apply to all stills "set up," of whatever size, and for whatever purpose intended. (Regulations No. 7, Revised, p. 6.)

Stills used for distillation of brandy from fruit are required to be stamped with a number, the letters and figures to be not less than three-eighths of an inch long. (Regulations No. 7, Revised, p. 207.)

Registry of stills. (T. D. 193; T. D. 337; T. D. 918; T. D. 1021; T. D. 1344.)

Notice of intention to carry on business of distiller or rectifier.

SEC. 3259. Every person engaged in, or intending to be engaged in, the business of a distiller or rectifier, shall give notice in writing, subscribed by him, to the collector of the district wherein such business is to be carried on, stating his name and residence, and, if a company or firm, the name and residence of each member thereof, the name and residence of every person interested or to be interested in the business, the precise place where said business is to be carried on, and whether of distilling or rectifying; and if such business is carried on in a city, the residence and place of business shall be indicated by the name of the street and number of the building. In case of a distiller, the notice shall also state the kind of stills and the cubic contents thereof, the number and kind of boilers, the number of mash-tubs and fermenting-tubs, the cubic contents of each tub, the number of receiving-cisterns, the cubic contents of each cistern, the number of hours in which the distillery will ferment each tub of mash or beer, the estimated quantity of distilled spirits which the apparatus is capable of distilling every twenty-four hours, a particular description of the lot or tract of land on which the distillery is situated, and of the buildings thereon, including their size, material, and construction; and that said distillery premises are not within six hundred feet, in a direct line, of any premises authorized to be used for rectifying or refining distilled spirits by any process.

In case of a rectifier, the notice shall state the precise place where such business is to be carried on, the name and residence of every person interested or to be interested in the business, the process by which the applicant intends to rectify, purify, or refine distilled spirits, the kind and cubic contents of any still used or to be used for such purpose, the estimated quantity of spirits, which can be rectified, purified, or refined every twenty-four hours in such establishment, and that said rectifying establishment is not within six hundred feet, in a direct line, of the premises of any distillery registered for the distillation of spirits.

In case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of such distillery or rectifying establishment, or in the time of fermenting the mash or beer, notice thereof, in writing, shall be given to the said collector or proper deputy collector of the district within twenty-four hours after such change; and any deputy collector receiving such notice shall immediately transmit the same to the collector of the district. Every notice required by this section shall be in such form, and shall contain such additional particulars, as the Commissioner of Internal Revenue may, from time to time, prescribe.

Penalty.

Every person who fails or refuses to give such notice shall pay a penalty of one thousand dollars, and shall be fined not less than one hundred dollars nor more than two thousand dollars; and every person who gives a false or fraudulent notice shall, in addition to such penalty or fine,

be imprisoned not less than six months nor more than two years.

Section 7, act of March 1, 1879, requirement as to rectifier's bond, repealed by section 9, act of May 28, 1880 (21 Stat., 145).

Successions and changes of name or style of distillers. (Int. Rev. Circular No. 524, T. D. 20835, 1889; Regulations No. 7, Rev., p. 11.)

SEC. 3260 [as amended by sec. 1, act of May 28, 1880 (21 Stat. 145).] Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the first day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner of Internal Revenue, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be with at least two sureties, approved by the collector of the district, and for a penal sum not less than * the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days. *But in no case shall the bond exceed the sum of one hundred thousand dollars.*

The collector may refuse to approve said bond when, in his judgment, the situation of the distillery is such as would enable the distiller to defraud the United States; and in case of such refusal the distiller may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency at the discretion of the collector or Commissioner of Internal Revenue.

Every person who fails or refuses to give the bond hereinbefore required, or to renew the same, or who gives any false, forged, or fraudulent bond, shall forfeit the distillery, distilling-apparatus, and all real estate and premises connected therewith, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

Assessments against distillers.—Officers should segregate the amounts by periods covered by the different bonds, giving the amount for which each bond is liable. (T. D. 1541.)

[SEC. 3260a] [Sec. 67, act of Aug. 28, 1894 (28 Stat., 509).] That whenever any person intending to commence or to continue the business of a distiller shall execute a bond under the provisions of section thirty-two hundred and sixty of the Revised Statutes of the United

Distiller to give bond.

New bond.

Penalty.

Collectors may refuse to approve bond of distiller in certain cases.

States, and file the same with the collector of internal revenue for the district in which he proposes to distill, the collector may refuse to approve said bond if the person offering the same shall have been previously convicted, in a court of competent jurisdiction, of any fraudulent noncompliance with any of the provisions of law relating to the duties and business of distillers, or if the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall have compromised such an offense with the person upon the payment of penalties or otherwise, and, in case of such refusal, the person so proposing to distill may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final.

Congress has the power to require a bond as a condition precedent to commencing business. (*Mason v. Rollins*, 2 Biss., 99, Fed. Cas. 9252.)

Discretionary power of collectors as to approval of bonds. (T. D. 998.)

Necessity for increased vigilance on the part of collectors to avoid the taking of worthless bonds. (T. D. 816.)

A suit on a distiller's bond is not a suit for penalty, but an action on a contract. (*U. S. v. Dutcher*, 2 Biss., 51; 25 Fed. Cas., 15014; 8 Int. Rev. Rec., 161; *Raymond v. U. S.*, 14 Blatch., 51, 20 Fed. Cas., 11596.)

Stockholders of a corporation engaged in distilling can not be accepted as sureties. (16 Op. Atty. Gen., 10; 24 Int. Rev. Rec., 153.)

Bond of a corporation. Evidence of authority. (T. D., 852.)

Bond valid though not in form prescribed. (*United States v. Hodson*, 10 Wall., 395; 12 Int. Rev. Rec., 213; *United States v. Mynderse*, 12 ibid., 104; 14 ibid., 180.)

Where a bond contains conditions, some of which are legal and others illegal, and they are severable and separable, the latter may be disregarded and the former enforced. (*United States v. Hodson* (1870), 10 Wall., 395.)

Married women giving bond. (*United States v. Garlinghouse et al.*, 4 Ben., 194; 11 Int. Rev. Rec., 11.)

Collector should require compliance with State law. (T. D., 755.)

Any private agreement made by an officer which in any way changes the terms of the bond is as to the Government inoperative and void. (*United States v. Bicket*, 16 Int. Rev. Rec., 85; Fed. Cas. 14590.)

Liability for tax.—The distiller's bond is liable for the tax on spirits not paid by the distiller. (*U. S. v. National Surety Co.*, 157 Fed. Rep., 174, citing *U. S. v. National Surety Co.*, 122 Fed., 904; 59 C. C. A., 130; T. D. 665.)

The execution of a warehousing bond covering spirits placed in a warehouse does not release liability on the annual bond. (*United States v. Richardson* (1904), 127 Fed. Rep., 893.)

Effect of surety signing upon condition another name is added. (*Dair v. United States*, 16 Wall., 1; 18 Int. Rev. Rec., 10.)

Recovery of fine on distiller's bond. (*United States v. Thompson et al.*; 37 Int. Rev. Rec., 160; 45 Fed. Rep., 468.)

Defenses on suits on bonds.—Validity of assessment (*Clinkenbeard v. United States*, 21 Wall., 65; 21 Int. Rev. Rec., 37). Compromise with principal (*United States v. Chouteau*, 102 U. S., 603; 27 Int. Rev. Rec., 49). As to assessment being prima facie evidence only (*United States v. Rindskopf*, 105 U. S., 418; 28 Int. Rev. Rec., 141. See notes under sec. 3182, R. S.).

The bond covers not merely duties imposed by existing law, but duties belonging to and naturally connected with the bus-

iness imposed by subsequent law. (*United States v. Singer*, 15 Wall., 112; 17 Int. Rev. Rec., 9. See also *United States v. Powell*, 14 Wall., 493; 17 Int. Rev. Rec., 18.)

Circumstantial evidence. (*United States v. Cole*, 134 Fed. Rep., 697; T. D., 786.)

Liability of sureties.—Liability of surety not to be extended beyond the terms of the contract. When, after a bond has been signed by two sureties with the understanding between them and the obligor and obligee that it was to be signed by a third surety whose name was written in the bond, the name of the third surety was altered in the body of the instrument, with the knowledge of the obligee, by the substitution of a different surety, who then signed the bond: Held, that the two sureties were discharged. (*United States v. O'Neill and others*, 30 Int. Rev. Rec., 127; 19 Fed. Rep., 567.)

Surety not liable when the United States purchases spirits in a distiller's warehouse without retaining the tax due. (*United States v. Aiken*, 110 Fed. Rep., 370; affirmed in *United States v. Mullins* (surety), 119 Fed. Rep., 334.)

Sureties not liable when distillery is carried on at a place other than that mentioned in bond. (*United States v. Boecker et al.*, 21 Wall., 652; 21 Int. Rev. Rec., 78.)

Bond not liable for tax when spirits are forfeited and sold and tax collected from purchaser. (*United States v. Ulrici et al.*, 111 U. S., 38; 30 Int. Rev. Rec., 111.)

Two assessments covering partially the same period will be presumed to be for different liquors till the contrary is shown.

An action upon a bond conditioned upon the payment of an assessment will not fail because the complaint does not set forth the whole of the assessment. (*United States v. O'Neill and others*, 30 Int. Rev. Rec., 127; 19 Fed. Rep., 567.)

In an action on a distiller's bond upon the question whether the sureties were entitled to a deduction of the amount realized from sale of distiller's personal property, held, that the judgment should be entered for the full amount of the bond, the sum realized from the personal property not being a legal offset. (*United States v. Loeb et al.*, 14 Fed. Rep., 688.)

The proceeds of a sale of spirits forfeited for violation of the internal-revenue law belong exclusively to the Government, and can not be applied to the payment of tax. (*Harkins v. Williard*, 146 Fed. Rep., 703; 77 Circuit Court of Appeals, 129; T. D., 1030.)

When spirits are forfeited and sold and the tax paid by the purchaser, surety on bond is relieved from liability on account of an assessment against the distiller for tax on the same spirits. (*United States v. National Surety Co.*, Circuit Court of Appeals (1907), 157 Fed. Rep., 174, affirming *United States v. Witt*, U. S. Circuit Court, northern district of Georgia, following *United States v. Ulrici*, 111 U. S., 38; 30 Int. Rev. Rec., 111. See *U. S. Fidelity & Guaranty Co. v. United States*, 158 Fed. Rep., 604, reversing 144 Fed. Rep., 866; T. D. No. 975.)

Liability for tax when spirits are seized and sold for violation of law. (T. D. 923; T. D. 1385.)

Suit should be first brought on warehousing bonds to recover tax on spirits before resorting to the distiller's bond. (T. D. 20920, 1899.)

Laches.—Laches of officers does not relieve sureties. (*United States v. Hosmer et al.*, 17 Int. Rev. Rec., 38; Fed. Cas. No. 15394; 21 Int. Rev. Rec., 14; *Minturn v. United States*, 29 Int. Rev. Rec., 34; 106 U. S., 437.)

Negligence of an officer in permitting the removal of distilled spirits from a distillery warehouse before payment of taxes. (*Hart v. United States*, 95 U. S., 316.)

The stealing of spirits from warehouse by reason of the omission of officers to provide sufficient locks is no defense to action on bond. (*United States v. Witten*, 143 U. S., 76; 38 Int. Rev. Rec., 46.)

Where spirits were lost by reason of the negligence of a Government officer, after the same had been taken in possession by the Government, the bond is liable for the tax. (United States *v.* Guest, 143 Fed. Rep., 456; T. D. 979; United States *v.* Sisk, 176 Fed. Rep., 885.)

Opening judgment; new trial. A court has no power to open a judgment against the surety on a distiller's bond and grant a new trial upon the ground that certain facts, existing when the case was tried, were not then put in evidence. (United States *v.* Millinger et al., 7 Fed. Rep., 187.)

Production of papers.—The defendants in a suit on a distiller's bond, instituted for the recovery of taxes assessed under section 3253, Revised Statutes, have no legal right to the use at the trial of the reports, documents, and other papers on file in the office of the Commissioner of Internal Revenue. Nor has the court authority to compel the production of such papers. (16 Op. Atty. Gen., 24; 24 Int. Rev. Rec., 178.)

Fraudulent bond.—Indictment for executing and signing a false and fraudulent bond. (United States *v.* O'Brien, 7 Int. Rev. Rec., 61; Fed. Cas. 15909.)

Bond not to be approved until law and regulations are complied with. SEC. 3261. No collector shall approve the bond of any distiller until all the requirements of the law and all regulations made by the Commissioner of Internal Revenue in relation to distilleries, in pursuance thereof, have been complied with.

Penalty against collector. Every collector who violates this provision shall forfeit and pay two thousand dollars, and be dismissed from office.

Distiller must be owner in fee-simple, or have written consent of owner, etc. SEC. 3262 [as amended by sec. 2, act of May 28, 1880 (21 Stat., 145).] No bond of a distiller shall be approved, unless he is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated, or unless he files with the collector, in connection with his notice, the written consent of the owner of the fee, and of any mortgagee, judgment-creditor, or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment, or other incumbrance, and that in case of the forfeiture of the distillery premises, or of any part thereof, the title of the same shall vest in the United States, discharged from such mortgage, judgment, or other incumbrance.

In any case where the owner of a distillery or distilling-apparatus, erected prior to the twentieth day of July, eighteen hundred and sixty-eight has only an estate for a term of years or other estate less than fee-simple in the lot or tract of land on which the distillery is situated, the evidence of title to which shall have been duly recorded prior to that date; or in like case, where the lease or other evidence of title is held but was not required by the laws of the State to be recorded in order to be valid at the time of its execution; or in any case of such prior erection where the title was then, and has continued to be, in litigation; or in any case of such prior erection where such owner is

possessed of the fee, but incumbered with a mortgage executed and duly recorded prior to said twentieth of July, eighteen hundred and sixty-eight, and not due, or in any case of such prior erection where the fee is held by a feme-covert, minor, person of unsound mind, or other person incapable of giving consent, as hereinbefore required, the value of such lot or tract of land, together with the building and distilling-apparatus, shall be appraised in the manner to be prescribed by the Commissioner of Internal Revenue; and the collector may, at the discretion of the Commissioner, be authorized to accept, in lieu of the said written consent of the owner of the fee, the bond of such distiller, in such form as the Commissioner may prescribe, with not less than two sureties, conditioned that in case the distillery, distilling-apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond. Said sureties shall be residents of the collection-district or county, or of an adjoining county in the same State in which the distillery is situated, and owners of unincumbered real estate in said district or county, or adjoining county, equal to such appraised value, and the penal sum of said bond shall be equal to the appraised value of said lot or tract of land together with the buildings and distilling apparatus:

Provided, That in case of any distillery sold at judicial or other sale in favor of the United States, a bond may be taken at the discretion of the Commissioner of Internal Revenue, in lieu of the written consent required by this section, and the person giving such bond may be allowed to operate such a distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law.

And provided also, *That the collector may at any time, at the discretion of the Commissioner, accept such bond as is authorized to be given by the distiller in lieu of the written consent of the owner of the fee in the case of a distillery erected prior to July twentieth, eighteen hundred and sixty-eight, notwithstanding such distillery has since then been increased by the addition of land or buildings adjacent or contiguous thereto, not owned by the distiller himself in fee; such bond to be for and in respect of such addition only, if the distillery be one which the distiller owns in fee or in respect to which he has procured the written consent of the owner of the fee or other incumbrance, otherwise to be for and in respect of the entire distillery as increased by such additions.*

Enforcement of lien. Sale of leasehold interest. (Mansfield v. Excelsior Refinery Co., 36 Int. Rev. Rec., 165; 135 U. S., 326.) Liability of sureties when distillery premises are encumbered. (Osborne v. United States, 19 Wall., 577; 20 Int. Rev. Rec., 126.)

SEC. 3263. Every distiller and person intending to engage in the business of a distiller shall, previous to the approval of his bond, cause to be made, under the direc-

Plan of distillery.

tion of the collector of the district, an accurate plan and description, in triplicate, of the distillery and distilling-apparatus, distinctly showing the location of every still, boiler, doubler, worm-tub, and receiving-cistern, the course and construction of all fixed pipes used or to be used in the distillery, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic contents of every still, mash-tub, and fermenting-tub, the cubic contents of every receiving-cistern, and the color of each fixed pipe, as required in this Title. One copy of said plan and description shall be kept displayed in some conspicuous place in the distillery, and two copies shall be furnished to the collector of the district, one of which shall be kept by him, and the other transmitted to the Commissioner of Internal Revenue. The accuracy of every such plan and description shall be verified by the collector, the draughtsman, and the distiller; and no alteration shall be made in such distillery without the consent, in writing, of the collector. Any alteration so made shall be shown on the original, or by a supplemental plan and description, and a reference thereto noted on the original, as the collector may direct; and any supplemental plan and description shall be executed and preserved in the same manner as the original.

Distillers whose distilleries have a daily spirit-producing capacity of 30 gallons of proof spirits, or less, are exempted from the provision requiring a plan. (Sec. 3255a.)

Surveys of distilleries. SEC. 3264 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327), and act of June 22, 1910 (36 Stat., 590)]. On receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the collector, or a deputy collector, to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the Commissioner of Internal Revenue for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit-producing capacity for a day of twenty-four hours.

In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, seventy gallons of beer brewed or fermented from grain shall represent not less than

one bushel of grain. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, one copy shall be retained by the collector, and one copy shall be transmitted to the Commissioner of Internal Revenue, and the survey shall take effect upon the delivery of such copy to the distiller.

Whenever the Commissioner is satisfied that any report of the capacity of a distillery is incorrect or needs revision, he shall direct the collector to make in like manner another survey of said distillery, and the report thereof shall be made and deposited as hereinbefore required:

Resurvey.

Provided, That the survey of any distillery estimated and stated by the distiller, in his notice of intention to distill, as capable of distilling not more than one hundred and fifty proof-gallons of distilled spirits every twenty-four hours may be made by the collector or by a deputy collector without the aid of an assistant; and that all surveys made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, and all surveys made for the purpose of changing the true spirit-producing capacity of any distillery for a day of twenty-four hours as estimated and determined by a previous survey, but which surveys do not require the remeasuring of the fermenting-tubs in a grain or molasses distillery, or the still or stills in a distillery of apples, peaches, or grapes exclusively, may be made without taking the measurements of the fermenting tubs or stills, as the case may be, and without revisiting the distillery:

And provided further, That the Commissioner of Internal Revenue may, whenever he shall deem it proper, designate an officer, agent, or person other than the collector or deputy collector, to make, with or without the aid of a designated assistant, the surveys and resurveys hereinabove provided for.

As to necessity of delivering a copy of the survey to a distiller to fix his liability; survey binding on distiller. (*Peabody v. Stark*, 16 Wall., 240; 17 Int. Rev. Rec., 106. *United States v. Ferrary*, 93 U. S. (3 Otto), 625; 22 Int. Rev. Rec., 394. *Wright v. United States*, 108 U. S., 281.)

Circular No. 739 (T. D. 1641). Filtration—areaeration process.

SEC. 3265. Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, shall, before the same is removed from the place of manufacture, notify in writing the collector of the district in which such still, boiler, or other vessel is to be used or set up, by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture; and no such still, boiler, or other vessel shall be set up without the permit in writing of the said collector for that purpose; and any person who sets up any such still, boiler, or other vessel, without first obtaining a permit from the said collector of the district in which

Notice by manufacturer of a still.

Penalty for setting up still without permit.

such still, boiler, or other vessel is intended to be used, or who fails to give such notice, shall pay in either case the sum of five hundred dollars, and shall forfeit the distilling apparatus thus removed or set up in violation of law.

Section 3265 applies only to stills intended for distillation of spirits (T. D. 1344). See section 3258.

This section does not apply to stills for redistilling benzine and gasoline (T. D. 1021).

Distilling on certain premises prohibited; penalty. SEC. 3266. No person shall use any still, boiler, or other

or in any shed, yard, or inclosure connected with any dwelling-house, or on board of any vessel or boat, or in any building, or on any premises where beer, lager beer, ale, porter, or other fermented liquors, vinegar, or ether are (is) manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are retailed, or where any other business is carried on; or within six hundred feet in a direct line of any premises authorized to be used for rectifying; and every person who does any of the acts prohibited by this section, or aids or assists therein, or causes or procures the same to be done, shall be fined one thousand dollars and imprisoned for not less than six months nor more than two years, in the discretion of the court, for each such offense: *Provided*, That saleratus may be manufactured, or meal or flour ground from grain, in any building or on any premises where spirits are distilled; but such meal or flour shall be used only for distillation on the premises: *Provided further*, That any boiler used in generating steam or heating water to be used in any distillery, may be located in any other building or on any other premises to be connected with such still or boiling-tubs, by suitable pipes or other apparatus, or the steam from such boiler in the distillery may be conveyed to other premises to be used for manufacturing or other purposes.

Vinegar (Sec. 3282). See act of June 14, 1879, p. 176.

Rectifying within 600 feet, see section 3244, subsection third, and section 3280 (8 Int. Rev. Rec., 73).

Distilling on premises where vinegar was manufactured. (*United States v. Simmons*, 96 U. S. (6 Otto), 360; 24 Int. Rev. Rec., 347.)

Indictment under section 3266. (*United States v. Malone*, 9 Fed. Rep., 897.)

The prohibition of a distillery within 600 feet of a rectifying establishment is not an unwarrantable interference with the use and disposition of property. If a business affords unusual facilities for evading the Government tax, then Congress may prescribe the modes, conditions, and limitations under which that business can be transacted. (*Mason v. Rollins*, 2 Biss., 99.)

Receiving - cisterns in distilleries.

SEC. 3267. The owner, agent, or superintendent of any distillery established as hereinbefore provided, shall erect, in a room or building to be provided and used for that purpose, and for no other, and to be constructed in the manner to be prescribed by the Commissioner of Internal Revenue, two or more receiving-cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during

the day of twenty-four hours, into which shall be conveyed all the spirits produced in said distillery; and each of said cisterns shall be so constructed as to leave an open space of at least three feet between the top thereof and the floor or roof above, and of not less than eighteen inches between the bottom thereof and the floor below, and shall be so situated that the officer can pass around the same, and shall be connected with the outlet of the worm or condenser by suitable pipes or other apparatus, so constructed as always to be exposed to the view of the officer, and so connected and constructed as to prevent the abstraction of spirits while passing from the outlet of the worm or condenser back to the still or doubler, or forward to the receiving-cistern. Such cisterns and the room in which they are contained shall be in charge and under the lock and seal of the internal-revenue gauger designated for that duty; and all locks and seals required by law shall be provided by the Commissioner of Internal Revenue, at the expense of the United States; and the keys shall be in charge of the collector or such gauger as he may designate. On the third day after the spirits are conveyed into such cistern they shall be drawn off into casks, under the supervision of such gauger, in the presence of the store-keeper, and be removed directly to the distillery warehouse; but on special application to the collector by the owner, agent, or superintendent of any distillery, the spirits may be drawn off from the said cisterns, under the supervision of the gauger, at any time previous to the third day.

See [Sec. 3255a], allowing exemption from certain provisions of this section in case of small distilleries.

The penalty for failing to comply with the requirements of this section is provided by section 3456, page 361. (*United States v. Wm. McKim & Co.*, 10 Int. Rev. Rec., 74.)

Question of intent considered. (*Felton et al. v. United States*, 96 U. S. (6 Otto), 699; 24 Int. Rev. Rec., 252.)

SEC. 3268. Every person who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any cistern-room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern-room or building, or in any manner gains access to the contents therein, in the absence of the proper officer, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years.

Gaining access to distillery bottling warehouse without authority. (T. D. 990.)

Tampering with locks, etc., penalty. (Sec. 3311, p. 206.)

SEC. 3269. The door of the furnace of every still or boiler used in any distillery shall be so contructed that it tanks. Furnaces, tubs, doublers, worm-tanks.

may be securely fastened and locked. The fermenting-tubs shall be so placed as to be easily accessible to any revenue officer, and each tub shall have distinctly painted thereon in oil-colors its cubic contents in gallons and the number of the tub. There shall be a clear space of not

less than one foot around every wood-still, and not less than two feet around every doubler and worm-tank. The doubler and worm-tanks shall be elevated not less than one foot from the floor, and every fixed pipe to be used by the distiller, except for conveyance of water, or of spent mash or beer only, shall be so fixed and placed as to be capable of being examined by the officer for the whole of its length or course, and shall be painted, and kept painted, as follows, that is to say: Every pipe for the conveyance of mash or beer shall be painted of a red color; every pipe for the conveyance of low-wines back into the still or doubler shall be painted blue; every pipe for the conveyance of spirits shall be painted black, and every pipe for the conveyance of water shall be painted white. Whenever any fixed pipe is used by any distiller which is not painted or kept painted as herein directed, or which is painted otherwise than as herein directed, he shall forfeit the sum of one thousand dollars.

Penalty.

See section 3255a, authorizing certain exemptions.

Apparatus and fastenings. SEC. 3270. The Commissioner of Internal Revenue is authorized to order and require such changes of or additions to distilling apparatus, connecting-pipes, pumps, or cisterns, or any machinery connected with or used in or on the distillery premises, or may require to be put on any of the stills, tubs, cisterns, pipes, or other vessels, such fastenings, locks, or seals as he may deem necessary.

Distillery warehouse. SEC. 3271. Every distiller shall provide, at his own expense, a warehouse, to be situated on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid; but no dwelling-house shall be used for such purpose, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into the distillery or into any other room or building; and such warehouse, when approved by the Commissioner of Internal Revenue, on report of the collector, is hereby declared to be a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district, and in charge of an internal-revenue store-keeper, assigned thereto by the Commissioner.

A bonded warehouse is an agency of the Government. (*George v. Fourth National Bank of Lainsville*, 41 Fed. Rep., 263.)

The Government has a lien on spirits in warehouse for deficiency tax, and a purchaser takes the property subject to the lien. (*Hartman v. Bean*, 99 U. S., 393, 25 Int. Rev. Rec., 141.)

Goods in the hands of the United States held for taxes can not be attached by State officers. (*Harris v. Dennie*, 3 Pet. 292.)

Spirits in bond not liable to seizure by sheriff. (*McCullough v. Large et al.*, 20 Fed. Rep., 309; 30 Int. Rev. Rec., 166; T. D. No. 21710, 1899.)

Distilled spirits in a United States bonded warehouse can not be seized under State process. (1894). (21 Op. Atty. Gen., 73.)

Sheriff can sell without taking possession. (*Kiel v. Harris*, 31 Int. Rev. Rec., 408.)

Spirits in warehouse destroyed by fire, section 3221, page 117 (Farrell *v.* United States, 99 U. S., 221; 25 Int. Rev. Rec., 83; Insurance Companies *v.* Thompson, 5 Otto, 547; United States *v.* Alexander et al., 110 U. S., 325.)

Special bonded warehouses for fruit brandy. (See act of Mar. 3, 1877, p. 192, and act of October 18, 1888, p. 192.)

[SEC. 3271a. [Act of Jan. 8, 1874 (18 Stat., 2).] That when from death or any other cause there shall be any change in the person, firm or company engaged in the business of distilling at any distillery, and the person, firm or company that by reason of such change ceases to carry on said business at such distillery has at the time of such change spirits in the distillery warehouse, it shall be lawful for the Commissioner of Internal Revenue, upon the written consent of the surviving principals and sureties interested, and under such rules and regulations, and upon such other conditions as he may prescribe, to permit the succeeding person, firm, or company to use the distillery warehouse on the premises in the same manner as if it did not contain distilled spirits belonging to the original person, firm or company after setting apart and separating, by a secure and unbroken partition such portion of it as may be necessary for the storage and safe-keeping of the spirits distilled by the original person, firm or company, during the period allowed by law for the removal of distilled spirits from distillery warehouses, or until said spirits are removed, and the tax paid thereon within that time.

Provided, That nothing herein contained shall impair or in any way affect the lien existing at the time of such change under section one of the internal revenue act of July twenty, eighteen hundred and sixty-eight, as amended, or other liabilities under any internal revenue law, but the existence of such lien shall be no ground for refusing to approve the bond of the succeeding person, firm or company, anything in section eight of the said act of July twenty, eighteen hundred and sixty-eight, as amended, to the contrary notwithstanding.

The provisions of the act of July 20, 1868, here referred to (15 Stat., 125, 128), and the amendments thereto, are incorporated in the Revised Statutes, sections 3251, 3260, 3262.

SEC. 3272. Whenever in the opinion of the Commissioner of Internal Revenue any distillery or other warehouse is unsafe or unfit for use, or the merchandise therein is for any reason liable to loss or great wastage, he may discontinue such warehouse, and require the merchandise therein to be transferred to such other warehouse as he may designate and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the Commissioner, and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed,

Distillery warehouses can be continued in use after changes have occurred in the management of the business.

Use of distillery warehouse by successors in certain cases.

Partition.

Lien for tax not impaired.

When a warehouse becomes unsafe.

or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon restraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

Storekeepers have charge under direction of warehouse collector. SEC. 3273. The store-keeper assigned to any distillery connected therewith; and every store-keeper shall have charge of the warehouse to which he is assigned, and of such distillery, under the direction of the collector controlling the same.

Storekeepers' books and returns. (Secs. 3301, 3302, p. 199, 200.)

Custody and management of warehouse. SEC. 3274. Every distillery warehouse shall be in the joint custody of the store-keeper and the proprietor thereof. It shall be kept securely locked, and shall at no time be unlocked, or opened, or remain open, unless in the presence of such store-keeper, or other person who may be designated to act for him, as provided by law; and no articles shall be received in or delivered from such warehouse except on an order or permit addressed to the store-keeper and signed by the collector having control of the warehouse.

Distiller to keep distillery accessible. SEC. 3275. No fence or wall of a height greater than five feet shall be erected or maintained around the premises of any distillery, so as to prevent easy and immediate access to such distillery. And every distiller shall furnish to the collector of the district as many keys of the gates and doors of the distillery as may be required by the collector, from time to time, for any revenue officer or other person who may be authorized to make survey or inspection of the premises, or of the contents thereof; and said distillery shall be kept always accessible to any officer or other person having any such key. Every person who violates any of the foregoing provisions of this section by negligence or refusal, or otherwise, shall pay a penalty of five hundred dollars.

Power of revenue officers to enter and examine distilleries. SEC. 3276 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327)]. It shall be lawful for any revenue officer at all times, as well by night as by day, to enter into any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and to examine, gauge, measure, and take an account of every still or other vessel or utensil of any kind, and of all low-wines, and of the quantity and gravity of all mash, wort, or beer, and of all yeast, or other compositions for exciting or producing fermentation in any mash or beer, of all spirits and of all materials for making or distilling spirits, which may be in any such distillery or premises, or in possession of the distiller.

And whenever any internal-revenue officer, or any person called by him to his aid, is hindered, obstructed, or prevented by any distiller, or by any workman, or other person acting for such distiller or in his employ, from entering into any such distillery or building or place as aforesaid; or any such officer is by the distiller or his workmen, or any person in his employ, prevented or hindered from, or opposed, or obstructed, or molested in the performance of his duty under the internal-revenue laws, in any respect, the distiller shall forfeit the sum of *not exceeding* one thousand dollars.

And whenever any officer, having demanded admittance into a distillery or distillery premises, and having declared his name and office, is not admitted into such distillery or premises by the distiller or other person having charge thereof, it shall be lawful for such officer at all times, as well by night as by day, to break open by force any of the doors or windows, or to break through any of the walls of such distillery or premises necessary to be broken open or through, to enable him to enter the said distillery or premises; and the distiller shall forfeit the sum of *not exceeding* one thousand dollars.

All the provisions of sections 3276, 3277, and 3278 are extended and made applicable to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them. (Sec. 3282, p. 175.)

Obstructing or assaulting officers. (Sec. 65, Penal code, p. 415.)

SEC. 3277. On the demand of any internal-revenue officer, every distiller or rectifier shall furnish strong, safe, and convenient ladders of sufficient length to enable the officer to examine and gauge any vessel or utensils in such distillery or premises; and shall, at all times when required, supply all assistance, lights, ladders, tools, staging, or other things necessary for inspecting the premises, stocks, tools, and apparatus belonging to such person, and shall open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels not under the control of the revenue officer in charge, under a penalty of five hundred dollars for every refusal or neglect so to do.

Section 3152, makes this section applicable to revenue agents (p. 67).

SEC. 3278. It shall be lawful for any revenue officer and any person acting in his aid, to break up the ground on any part of a distillery, or premises of a distiller or rectifier, or any ground adjoining or near to such distillery or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other

Obstructing officer; penalty.

Penalty for not admitting officer.

Distillers and
rectifiers to furnish facilities for
examination;
penalty for neglect.

Officers can
break up ground
or walls in order
to examine.

conveyance conveys or conceals any mash, wort, or beer, or other liquor, which may be used for the distillation of low-wines or spirits, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

Sigⁿs to be put up by distillers and rectifiers; penalty for neglect.

SEC. 3279. Every person engaged in distilling or rectifying spirits, and every wholesale liquor-dealer, shall place and keep conspicuously on the outside of the place of such business a sign, exhibiting in plain and legible letters, not less than three inches in length, painted in oil-colors or gilded, and of a proper and proportionate width, the name or firm of the distiller, rectifier, or wholesale dealer, with the words: "Registered distillery," "rectifier of spirits," or "wholesale liquor dealer," as the case may be. Every person who violates the foregoing provision by negligence or refusal, or otherwise, shall pay a penalty of five hundred dollars.

Penalty for using false signs etc.

And every person, other than a rectifier or wholesale liquor-dealer who has paid the special tax, or a distiller who has given bond as required by law, who puts up or keeps up the sign required by this section, or any sign indicating that he may lawfully carry on the business of a distiller, rectifier, or wholesale liquor-dealer, shall forfeit and pay one thousand dollars, and shall be imprisoned not less than one month nor more than six months. And every person who works in any distillery, rectifying establishment, or wholesale liquor-store, on which no sign is placed and kept, as hereinbefore provided; and every person who knowingly receives at, carries or conveys any distilled spirits to or from, any such distillery, rectifying establishment, warehouse, or store, or who knowingly carries and delivers any grain, molasses, or other raw material to any distillery on which such sign is not placed and kept, shall forfeit all horses, carts, drays, wagons, or other vehicle or animal used in carrying or conveying such property aforesaid, and shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than one month nor more than six months.

Insufficiency of indictment under section 3279. (*Terry v. U. S.*, 120 Fed. Rep., 483.)

U. S. v. Flynn (15 Blatchf. (U. S.) 302.) But this does not apply to one who merely works in putting up a building in which an illicit still is set up. (*U. S. v. Burgess*, 33 Fed. Rep., 833.)

Wholesale liquor dealer's sign. (T. D. 874, 945.)

Distillers' sign.—Display of sign reading "____ Distilling Company," except by qualified distiller, is illegal, unless followed by words removing the presumption that the dealer is a distiller. (T. D. 1432.)

The sign "Practical distiller," used by a wholesale dealer and rectifier who is not an authorized distiller is in violation of section 3279, Revised Statutes. (T. D. 19331, 1898.)

Distillers not to carry on business until the law is complied with.

SEC. 3280. It shall not be lawful for any distiller to commence or to continue the business of distilling, until he has given the bond required by law, and complied with the

provisions of law relating to the registration and survey of distilleries, and the arrangement and construction of distilleries and the premises connected therewith; nor shall it be lawful for any person to engage in the business of distilling on any premises distant less than six hundred feet in a direct line from any premises used for rectifying; nor shall the processes of distillation and rectification both be carried on within the distance of six hundred feet in a direct line.

Distilling within
in 600 feet of rectifying establish-
ment prohibited.

Section 3266, page 166.

[SEC. 3281.] [See. 16, act of Feb. 8, 1875 (18 Stat., 307).] That any person who shall carry on the business of a rectifier, wholesale liquor-dealer, retail liquor-dealer, wholesale dealer in malt-liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years.

Rectifiers, liq-
uer dealers, etc.,
carrying on busi-
ness without pay-
ment of special
tax.

Distiller carry-
ing on business
without giving
bond, or with in-
tent to defraud.

Fine and im-
prisonment.

Forfeiture.

And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or enclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

See sections 3242, and 3257.

See references under section 3453, p. 359.

Penalty for omitting to do things required where no punishment is imposed by any other section. (Sec. 3456, p. 361.)

As to rectifiers carrying on business with intent to defraud. (Sec. 3317, p. 210.)

As to sales made to evade tax. (Sec. 3454, p. 360.)

The provision declaring forfeiture of real estate not unconstitutional. (*United States v. Distillery on West Front Street*, 11 Int. Rev. Rec., 174.)

Stock of W. L. D. not forfeitable by reason of nonpayment of special tax. (2000 Bottles of Liquors, 5 Ben., 265.)

Forfeiture dates back.—Forfeiture dates back to the time the offense was committed, and operates at that time as a statutory transfer of the right of property to the Government. (*United States v. Fifty-six Barrels of Whisky*, 1 Abb., U. S., 93, 4 Int. Rev. Rec., 106; *United States v. One Cask, etc.*, 10 ibid., 93; *Henderson's Distilled Spirits*, 14 Wall., 44; 15 Int. Rev. Rec., 119; *United States v. McCoy's Distillery*, 21 ibid., 165.)

The title of the Government to the property infected with fraud vests from the time of its commission and the taint of fraud inheres in it even in the possession of an innocent purchaser. (*United States v. Eight Hundred Caddies of Tobacco*, 2 Bond, 305.)

Where an act is committed by the owner of a distillery by which a forfeiture thereof is incurred under the revenue laws, and subsequently the owner conveys the property to an innocent purchaser without notice of the commission of the act, the property remains still subject to the forfeiture incurred. The conveyance, in such case, passes no title as against the United States. (16 Op. Atty. Gen., 41.)

Forfeiture does not attach to spirits acquired after the offense. (*United States v. One Water Cask*, 10 Int. Rev. Rec., 93.)

Forfeiture denounced against distillers for carrying on business without having given bond, or with intent to defraud, and omission to keep books. (Sec. 3305, p. 201.)

Extent of forfeiture.—All personal property used in the unlawful business or in any other business openly carried on upon the premises is forfeited, even if the owner had no participation in or knowledge of the unlawful acts.

The forfeiture of lands and buildings does not reach beyond the right, title, and interest of the distiller, or of such other persons as have consented to the carrying on of the business of a distiller upon the premises. (*United States v. Stowell* (1890), 133 U. S., 1; 36 Int. Rev. Rec., 30.)

An engine is part of a house, and goes with it. (*Walker v. Sherman*, 20 Wend., 635.)

As to the boiler, engine, pump, vats, and tanks. (*United States v. Stowell*, 133 U. S., 1; 36 Int. Rev. Rec., 30.)

Amount of real estate liable to forfeiture. (*United States v. Piece of Land*, 1 Sawyer, 84; 11 Int. Rev. Rec., 126.)

Nothing can be plainer in legal decision than the proposition that the offense therein defined is attached primarily to the distillery and the real and personal property used in connection with the same, without any regard whatsoever to the personal misconduct or responsibility of the owner, beyond what necessarily arises from the fact that he leased the property to the distiller and suffered it to be used and occupied by the lessee as a distillery. (*Dobbins's Distillery v. United States*, 96 U. S., 395; 24 Int. Rev. Rec., 21; *U. S. v. Blair*, 3 Int. Rev. Rec., 67; Fed. Cas. 14, 607.)

A mortgage given by the distiller before the unlawful acts were committed is good as against the United States if the business was not carried on by the mortgagor's permission or connivance. (*U. S. v. Stowell*, 133 U. S., 1; 36 Int. Rev. Rec., 30.)

Forfeiture of distillery. (T. D., 589.)

Distillery liable to forfeiture without regard to the culpability of the owner of the property. Mechanics' liens can not be enforced in State courts after seizure by the marshal in forfeiture proceedings. (*Heidritter v. Elizabeth Oil-Cloth Co.* (1881), 6 Fed. Rep., 138.)

The principles of law upon this subject are clearly and fully announced in *Distillery v. United States* (96 U. S., 395), and cases cited. (*United States v. Two Bay Mules* (1888), 36 Fed. Rep., 84.)

Operation of forfeitures against innocent persons. (*United States v. One Barrel Whisky*, 4 Int. Rev. Rec., 146; *United States v. One Still*, 5 Blatch., 403; 5 Int. Rev. Rec., 189; *United States v. Twenty-one Barrels High Wines*, 6 ibid., 213; *Distilled Spirits, etc. (mortgage)*, 2 Ben., 486; 8 Int. Rev. Rec., 81; *United States v. Whisky*, 11 ibid., 109; *United States v. Distillery at Spring Valley (leading case)*, 11 Blatch., 255; 18 Int. Rev. Rec., 59; *Dobbins v. United States*, 6 Otto, 395; 24 Int. Rev. Rec., 21; *United States v. One Copper Still (mortgage)*, ibid., 317; 8 Biss., 270; *Thacher's Distilled Spirits*, 103 U. S. (13 Otto), 679; 27 Int. Rev. Rec., 144; *U. S. v. Three Copper Stills*, 47 Fed. Rep., 495; *U. S. v. 220 Patented Machines (Jacobs)*, 99 Fed. Rep., 495; *T. D.*, 54.)

As to person allowing ingress or egress over premises to or from a distillery. (*Gregory v. United States*, 17 Blatch., 325; 26 Int. Rev. Rec., 27.)

Principal liable for acts of agent.—The acts of the agent imputed to the principal so far as they work the forfeiture of property used for unlawful purposes. (*Bush v. United States*, 31 Int. Rev. Rec., 305; 24 Fed. Rep., 917.)

Liability of employer for acts of servant. (*United States v. Buchanan*, 28 Int. Rev. Rec., 51.)

Presumption and burden of proof. (*One Hundred and Ninety-nine Barrels of Whisky v. United States*, 94 U. S., 86; *United States v. One Still*, 5 Int. Rev. Rec., 189; *United States v. Mathoit, I Sawyer*, 142; 11 Int. Rev. Rec., 158.)

The burden of establishing the right of forfeiture is on the Government. Absence of proof. (*United States v. One Engine and Belting, etc.* (1910), C. C. A.; 179 Fed. Rep., 698.)

Intent to defraud. (*U. S. v. Simmons*, 96 U. S., 360; 24 Int. Rev. Rec., 347.)

Effect of acquittal.—If a person is tried for the same offense for which distillery is seized and acquitted, it is a bar to a suit in rem against the distillery. (*Coffey v. United States*, 116 U. S., 436; 32 Int. Rev. Rec., 38.)

Evidence. (Quantity of distilled spirits, 9 Int. Rev. Rec., 9; *United States v. Blaisdell*, ibid., 82; *United States v. Staton*, 25 ibid., 10; *United States v. Dobbs*, 15 ibid., 9.)

The abandonment by the Government of an action for forfeiture does not affect its lien on the seized property for unpaid taxes. (*Aiken v. Bean*, 8 Biss., 83; 23 Int. Rev. Rec., 351.)

[SEC. 3281a.] [See 9, act of Mar. 1, 1879 (20 Stat., 327)]. Arrest of persons while operating illicit distillery.
Where any marshal or deputy marshal of the United States within the district for which he shall be appointed shall find any persons or person in the act of operating an illicit distillery, it shall be lawful for such marshal or deputy marshal to arrest such person or persons, and take him or them forthwith before some judicial officer named in section one thousand and fourteen of the Revised Statutes, who may reside in the county of arrest or if none, in that nearest to the place of arrest, to be dealt with according to the provisions of sections ten hundred and fourteen, ten hundred and fifteen, ten hundred and sixteen of the said Revised Statutes.

Section 1014, Appendix, page 389.

Warrants of arrest for violations of internal-revenue laws, page 402. (XII Comp. Dec., 803; IV ibid., 338, 340.)

There is no repugnance between this section and section 19, act of March 28, 1896, page 402. (16 Comp. Dec., 669.)

SEC. 3282 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327)]. No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or

Mash, wort,
and vinegar.

fermented in any building or on any premises other than a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person, other than an authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol, * * * in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years: *Provided further*, That nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. * * *

But no worm, goose-neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on.

Vinegar factory not to be within 100 feet of a distillery. Nor shall any vinegar factory, for the manufacture of vinegar as aforesaid, be permitted within six hundred feet of any distillery or rectifying house. But it shall be lawful for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar.

Vinegar with over 2 per cent of alcohol. No person, however, shall remove, or cause to be removed, from any vinegar factory or place where vinegar is made, any vinegar or other fluid or material containing a greater proportion than two per centum of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section.

See. 3276, 3277,
3278 applicable. And all the provisions of sections thirty-two hundred and seventy-six, thirty-two hundred and seventy-seven, and thirty-two hundred and seventy-eight of the Revised Statutes of the United States are hereby extended and made applicable to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them.

Vinegar factories before Mar.
1, 1879. Act of June 14, 1879 (21 Stat., 20). That any vinegar factory for the manufacture of vinegar, established and operated as a vinegar factory prior to March first, eighteen hundred and seventy-nine, may be operated for the manufacture of vinegar by the use of alcoholic vapor within such

distance less than six hundred feet of any distillery or rectifying house under such regulations as the Commissioner of Internal Revenue may prescribe with the approval of the Secretary of the Treasury.

Manufacture of vinegar by the employment of alcoholic vapor. (25 Int. Rev. Rec., 157; Regulations No. 7 revised, p. 226.)

United States *v.* Prussing (2 Biss., 344); United States *v.* Distillery (23 Int. Rev. Rec., 147).

Rectifiers making a wine mash. (T. D. 1437, Cir. No. 731.)

On and after September 1, 1909, rectifiers prohibited from making a so-called wine mash and using the product thereof in the production of compound liquors.—Provisions of Internal Revenue Circular 731 (suspended by Mimeograph Circular 599) reestablished. (T. D. 1528, August 7, 1909.)

Postponement until October 1, 1909, of operations of regulations prohibiting rectifiers from making a so-called wine mash and using the product thereof in the production of compound liquors—Modification of T. D. 1528. (T. D. 1537, August 31, 1909.)

Wine mash—Disposition of product on hand—Enforcement of Circular No. 731. (T. D. 1551, Oct. 13, 1909.)

Defining the formula which may be used in the manufacture of a mash not fit for distillation within the meaning of section 3282. (T. D. 1593.)

Production of so-called "pomace wine." (T. D. 1645.)

SEC. 3283. No malt, corn, grain, or other material shall be mashed, nor any mash, wort, or beer brewed or made, nor any still used by a distiller, at any time between the hour of eleven in the afternoon of any Saturday and the hour of one in the forenoon of the next succeeding Monday; and every person who violates the provisions of this section shall be liable to a penalty of one thousand dollars.

Relative to use of yeast rake on Sunday. (29 Int. Rev. Rec., 137.)

Relative to the use of pumps on Sunday. (30 Int. Rev. Rec., 45.)

SEC. 3284. Every distiller or person employed in any distillery who, in the absence of the storekeeper, or person designated to act as storekeeper, uses, or causes or permits to be used, any material for the purpose of making mash, wort, or beer, or for the production of spirits, or removes any spirit, shall forfeit and pay double the amount of taxes on the spirits so produced, distilled, or removed, and in addition thereto be liable to a penalty of one thousand dollars.

SEC. 3285 [as amended by sec. 3, act of May 28, 1880 (21 Stat., 145) and act of June 22, 1910 (36 Stat., 590).] Every fermenting tub shall be emptied at or before the end of the fermenting period; no fermenting tub in a sweet-mash distillery shall be filled oftener than once in seventy-two hours, nor in a sour-mash distillery oftener than once in ninety-six hours, nor in a rum distillery oftener than once in one hundred and forty-four hours, nor in a distillery where the filtration-aeration process is employed, that is, where the mash after it leaves the mash tub is passed through a filtering machine, before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, and

No process for
distilling be-
tween 11 p. m. of
Saturday and 1 a.
m. of Monday.

Penalty.

Using mate-
rial or removing
spirits in absence
of storekeeper.

Penalty.

Emptying fer-
menting tubs.

Filtration-aera-
tion process.

the approval of the Commissioner of Internal Revenue being secured, oftener than once in twenty-four hours. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

Circular No. 739 (T. D. 1641) relative to filtration-aeration process.

Drawing off water, cleansing worm tubs, etc. SEC. 3286 [*as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327).*] Whenever any officer requires the water contained in any worm tub in a distillery, at any time when the still is not at work, to be drawn off, and the tub and worm cleansed, the water shall forthwith be drawn off, and the tub and worm cleansed by the distiller, or his workmen, accordingly; and the water shall be kept and continued out of such worm tub for the period of two hours, or until the officer has finished his examination thereof. For any refusal or neglect to comply with any provision of this section, the distiller shall forfeit the sum of *not exceeding* one thousand dollars; and it shall be lawful for the officer to draw off such water, or any portion of it, and to keep the same drawn off for so long a time as he shall think necessary.

Penalty.

Section 3152, page 67, gives revenue agents the authority here conferred on officers.

Removal of spirits to warehouse and gauging and stamping same. SEC. 3287 [*as amended by act of Mar. 1, 1879; sec. 6, act of May 28, 1880 (21 Stat., 145), act of Feb. 21, 1899 (30 Stat., 843), and act of March 2, 1911 (36 Stat. 1014).*] All distilled spirits shall be drawn from the receiving cisterns into casks or packages, each of not less capacity than ten gallons wine measure, and shall thereupon be gauged, proved, and marked by an internal-revenue gauger, who shall cut on the cask or package containing such spirits, in a manner to be prescribed by the Commissioner of Internal Revenue, the quantity in wine gallons and in proof gallons of the contents of such casks or packages, and the particular name of such distilled spirits as known to the trade, that is to say, high wines, alcohol, or spirits, as the case may be, shall be marked or branded on the head of such cask or package in letters of not less than one inch in length; and the spirits shall be immediately removed into the distillery warehouse, and the gauger shall, in the presence of the storekeeper of the warehouse, place upon the head of the cask or package an engraved stamp, which shall be signed by the collector of the district and the storekeeper and gauger; and shall have written thereon the number of proof gallons contained therein, the name of the distiller, the date of the receipt in the warehouse, and the serial number of each cask or package, in progressive order, as the same are received from the distillery. Such serial number for ev[e]ry distillery shall be in a regular sequence of the serial number thereof, beginning with number one (No. 1) with the first cask or package deposited therein after July twentieth, eighteen hundred and sixty-eight, and no

two or more casks or packages warehoused at the same distillery shall be marked with the same number. The said stamp shall be as follows:

"Distillery-warehouse stamp No. —. Issued by _____, collector, _____ district, State of _____, distillery warehouse of _____, 18—, Cask No. —; contents _____ gallons proof-spirits.

"United States Storekeeper.

"Attest:

_____,
United States Gauger."

Provided, however, That upon the application of the distiller, and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, distilled spirits may be drawn into wooden packages, each containing two or more metallic cans, which cans shall have each a capacity of not less than five gallons, wine measure, such packages to be filled and used only for exportation from the United States. And there shall be charged for each of said packages or cases for the expense of providing and affixing stamps, five cents instead of ten cents as now required by law.

Act of Feb. 21, 1899.

Provided further, That alcohol or high-proof spirits with- drawn free of tax for the use of the United States, as authorized by section thirty-four hundred and sixty-four, Revised Statutes, may be drawn off for transfer by pipes direct from the receiving cisterns in the cistern room of any distillery to closed metal storage tanks situated in the distillery bonded warehouse and transferred from such storage tanks to tanks or tank cars for shipment, upon the execution of such bonds and under such regulations as the Secretary of the Treasury may prescribe.

Act of March 2, 1911.

Transfer of alcohol by pipes.

Regulations concerning the exportation of distilled spirits in inclosed metallic cans. (T. D. 20837; Reg. No. 29, revised; T. D. 905.)

Metal barrels or drums for high proof spirits permissible. (Cir. No. 678; T. D. 996.)

The deposit of the spirits in the warehouse was solely for the benefit of the distiller. The Government assumed no responsibility to him for their safe-keeping. (United States *v.* Witten, 143 U. S., 76; 38 Int. Rev. Rec., 46.)

Injunction to restrain the enforcement of an order requiring product known to the trade as "Spirits" to be branded as "Alcohol." (Union Distilling Co. *v.* Bettman, 181 Fed. Rep., 419.)

Regulations for marking and branding distilled spirits. (Cir. No. 723, T. D. 1352; Cir. No. 726, T. D. 1375, June 10, 1908; Cir. No. 728, T. D. 1390, July 13, 1908; Mim. Cir. No. 573, T. D. 1404, Aug. 6, 1908; Cir. No. 737, Apr. 23, 1910, T. D. 1620; and T. D. 1624; modified June 13, 1910; Cir. No. 738; T. D. 1638.)

Section 3287 makes the characteristics of the marking to be placed on the cask or package a matter of administrative discretion with the Commissioner, subject to the approval of the Secretary of the Treasury. Effect of restraining order. (27 Op. Atty. Gen., 43.)

Suit to enjoin collector and internal-revenue gaugers from marking rectified spirits "imitation whisky," acting under instructions in Internal-Revenue Circular 723 of May 5, 1908, issued in conformity with the direction of the President to the Secretary of Agriculture for the enforcement of the pure-food

act.—Decision of Judge Thompson sustained the Government.—Application for rehearing denied. (*Union Distilling Co. v. Bettman.*) (T. D. 1410.)

Suit to enjoin collector and internal-revenue gaugers from marking rectified spirits "imitation whisky."—Decision of Judge Humphrey denying application for preliminary injunction. *Woolner v. Rennick*, 170 Fed. Rep., 662; T. D. 1425. See also T. D. 1427, *Western Distilleries v. Collr. Muenter*.

Marking of distilled spirits. (27 Op. Atty. Gen., 47.)

Relative to marking distilled spirits produced from molasses at distilleries and rectifying houses pending litigation to test the decision of President Taft, of December 27, 1909, as to "What is whisky." (Cir. No. 740; T. D. 1647.)

Regulations under the last proviso of Section 3287, relative to the storage, removal and shipment in tanks and tank cars of alcohol free of tax for use of the United States. (Cir. No. 741; T. D. 1688.)

Tax-paid spirits
not to remain
on distillery
premises.

SEC. 3288. No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises, under the penalty of a forfeiture of all spirits so found.

Delay in affixing stamps indicating payment of tax on spirits no bar to forfeiture. (Letter to Collector Powers, May 22, 1896; 42 Int. Rev. Rec., 241.)

Forfeiture of
unstamped pack-
ages.

SEC. 3289. All distilled spirits found in any cask or package containing five gallons or more, without having thereon each mark and stamp required therefor by law, shall be forfeited to the United States.

Sections 3299, page 198, and 3323, page 214.

Rectified spirits included in term "distilled spirits." (*Boyd v. United States*, 14 Blatch., 317.)

See on this section *United States v. One Rectifying Establishment* (11 Int. Rev. Rec., 45); *United States v. 32 Barrels Distilled Spirits* (5 Fed. Rep., 188); 3 packages Distilled Spirits, 14 Fed. Rep., 569; *U. S. v. 14 packages*, 66 Fed. Rep., 984; *U. S. v. One package*, 88 Fed. Rep., 856.)

Whenever an examination of a distiller's original package shows an excess of one proof gallon or upward over contents, as shown by marks, brands, and stamps, it should be detained, gauged by two gaugers, and if excess is found by both to be 1 proof gallon or upward, the taxable excess should be estimated by the collector and reported for assessment against the distiller.
* * * (Regulations, No. 7, p. 189, 25 Int. Rev. Rec., 157.)

Where the tax on an excess is received as above, in case of spirits produced in another district, the amount thus collected will be transmitted, by certificate of deposit or otherwise, to the collector of the district in which the spirits were produced, and the fact of such remittance will be noted on the report on which the excess appears. The collector receiving the tax so transmitted will report the same on Form 23. (Regulations No. 7, p. 190.)

When coloring matter is introduced into packages of whisky, double stamped, it is held subject to forfeiture. (T. D. 800, June 15, 1904.)

Burden of proof: Where spirits are found in packages of more than 5 gallons capacity without stamps, burden of proof is on the claimant to show that they are tax-paid. (*U. S. v. Sykes*, 58 Fed. Rep., 1000.)

Information for forfeiture under section 3289 held bad on demurrer. (*U. S. v. Three Packages of Distilled Spirits*, 152 Fed. Rep., 580.)

Forfeiture is incurred if the marks and stamps are not such as prescribed, irrespective of the question of fraud. (*U. S. v. Seven Barrels of Whisky*, Moise & Co., 131 Fed. Rep., 806.)

Stamps without date forfeit spirits. (*United States v. 9 packages and United States v. 64 packages* (1892), 51 Fed. Rep., 191.)

Proceedings may be had under section 3289 without regard to the guilt of any particular person. (*U. S. v. 3 Copper Stills*, 47 Fed. Rep., 495.)

The law provides a complete system of marks and brands on spirits in order to enable them to be traced from the distillery or rectifying establishment into the hands of the consumer or retail dealer, and to prevent fraud on the revenue. (*U. S. v. Bardenheier*, 49 Fed. Rep., 846; *U. S. v. Three Pkgs. Dist. Spirits* (Graf & Co., claimants), 125 Fed. Rep., 52.)

Tampering with spirits in stamped packages. (T. D. 997.)

Covering stamps prohibited. (T. D. 772.)

SEC. 3290. Whenever any gauger employs any owner, agent, or superintendent of any distillery or distillery warehouse, or any person in the service of such owner, agent, or superintendent, or any rectifier or wholesale liquor-dealer, or any person in the service of such rectifier or wholesale liquor-dealer, to use his brands, or to discharge any of the duties imposed upon him by law, he shall, for each offense so committed, pay a fine not exceeding one thousand dollars, in the discretion of the court.

Gauger can not delegate his authority to any person. No substitution authorized. (*United States v. Bittinger*, 21 Int. Rev. Rec., 342; Fed. Cas. No. 14599.)

Regulations in regard to unofficial gauging. (No. 2, Revised, p. 92.)

Attachment of stamps by the successor of a gauging officer who has gauged spirits without stamping the package and completing and marking. (Regulations No. 7, p. 169.)

Internal-revenue officers prohibited from acting as agents of distillers. (Letter to Collector Herring, Aug. 17, 1896; 42 Int. Rev. Rec., 354.)

The furnishing blank Forms 59 for private purposes is unlawful. (T. D. 513.)

SEC. 3291. Every gauger shall, under such regulations as may be prescribed by the Commissioner of Internal Revenue, make a daily return to the collector of his district, giving a true account, in detail, of all articles gauged and proved or inspected by him, and for whom, and the number and kind of stamps used by him.

Gauger's compensation, etc. (Sec. 3157, p. 73.)

SEC. 3292. Every gauger who makes any false or fraudulent inspection, gauging, or proof shall pay a penalty of one thousand dollars, and be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

ENTRIES FOR DEPOSIT AND WAREHOUSING BONDS COVERING SPIRITS IN DISTILLERY WAREHOUSES AND SPECIAL BONDED WAREHOUSES.

SEC. 3293 [as amended by section 4, act of May 28, 1880 (21 Stat., 145), and sec. 49, act of Aug. 28, 1894 (28 Stat., 509)]. The distiller of all spirits removed as aforesaid to the distillery warehouse shall, on the first day of each month, or within five days thereafter, enter the same for

Gauger's returns.

Fraudulent inspection, gauging, etc.; penalty.

Entry, etc., of spirits removed to distillery warehouse.

deposit in such warehouse, under such regulations as the Commissioner of Internal Revenue may prescribe. Said entry shall be in triplicate, and shall contain the name of the person making the entry, the designation of the warehouse in which the deposit is made, and the date thereof, and shall be in the following form:

ENTRY FOR DEPOSIT IN DISTILLERY WAREHOUSE.

Entry of distilled spirits deposited by _____, in distillery warehouse _____, in the _____ district, State of _____, during the month ending on the _____ day of _____, anno Domini _____.

And the entry shall specify the kind of spirits, the whole number of packages, the marks and serial numbers thereon, the number of gauge or wine gallons, proof-gallons, and taxable gallons, and the amount of tax on the spirits contained in them; all of which shall be verified by the oath of the distiller of the same attached to the entry. The said distiller shall at the time of making said

Bond required. entry give his bond in duplicate, with one or more sureties, satisfactory to the collector of the district, conditioned that the principal named in said bond shall pay the tax on the spirits as specified in the entry, or cause the same to be paid, before removal from said distillery

Spirits to be removed from bond within eight years. warehouse, and within eight years from the date of said entry; and the penal sum of such bond shall not be less than the amount of the tax on such distilled spirits. One of said entries shall be retained in the office of the collector of the district, one sent to the storekeeper in charge of the warehouse, to be retained and filed in the warehouse, and one sent with duplicate of the bond to the Commissioner of Internal Revenue, to be filed in his office.

New bond in case of death, etc. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner of Internal Revenue. And in case the distiller fails or refuses to give the bond hereinbefore required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distress, issuing his warrant of distress for the amount of tax found to be due, as ascertained by him from the report of the gauger if no bond was given, or from the terms of the bond if a bond was given. But this provision shall not exclude any other remedy or proceeding provided by law.

T. D. 21735.

Excessive loss of spirits in warehouse. If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package hereafter deposited in a distillery warehouse, other than the loss provided for in section thirty-two hundred and twenty-one of the Revised Statutes of the United States,

as amended, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

That the tax on all distilled spirits hereafter entered for deposit in distillery warehouses shall be due and payable before and at the time the same are withdrawn therefrom and within eight years from the date of the entry for deposit therein; and warehousing bonds hereafter taken under the provisions of section thirty-two hundred and ninety-three of the Revised Statutes of the United States shall be conditioned for the payment of the tax on the spirits as specified in the entry before removal from the distillery warehouse, and within eight years from the date of said bonds.

Tax to be paid
within eight
years of date of
entry.

Circular No. 625, revised March 23, 1911. T. D. 1689.

A like provision as to spirits deposited in general bonded warehouses or in special bonded warehouses. (Sec. 58, Act of Aug. 28, 1894, p. 191.)

Collectors will, unless otherwise directed, where the distiller neglects to pay the tax on his bonded spirits within the time fixed by law, proceed to collect the tax due as above provided, instead of reporting the same on lists, Form 23.

In case of distress, the collector will first distrain upon the spirit as to which the tax is due and is a first lien (sec. 3251), and if further distress becomes necessary, upon the distillery property, which is also subject to the lien imposed by section 3251. (Circular letter to collectors, Nov. 4, 1899; T. D. 21735.)

Warehouse certificates for bonded spirits.—As warehouse certificates for bonded spirits form no part of our revenue system, the affixing of United States gaugers' names thereto can not be permitted under any circumstances. (T. D. 1494.)

Warehouse receipts or certificates for bonded spirits. (Cir. No. 25, Int. Rev. No. 736; T. D. 1503.)

[SEC. 3293a.] [See. 49 of the act of Aug. 28, 1894 (28 Stat., 509).] That warehousing bonds and transportation and warehousing bonds, conditioned for the payment of the taxes on all distilled spirits entered for deposit into distillery or special bonded warehouses on and after the passage of this Act, shall be given by the distiller of said spirits as required by existing laws, conditioned, however, for payment of taxes at the rate imposed by this Act and before removal from warehouse and within eight years; as to fruit brandy, from the date of the original gauge, and as to all other spirits from the date of the original entry for deposit, and all warehousing bonds or transportation and warehousing bonds conditioned

Warehousing
bonds to be given
by distillers.

Tax to be paid
within eight
years from date
or original gauge,
as to fruit brandy
and as to other
spirits from date
of original entry
for deposit.

for the payment of the taxes on distilled spirits entered for deposit into distillery or special bonded warehouses prior to that date shall continue in full force and effect Additional for the time named in said bonds, except where new or bonds. additional bonds are required under existing law.

* * * * *

Provided, That the distiller may, at his option and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, execute an annual bond for the spirits Annual bonds. so deposited in lieu of the bonds herein provided.

The amendments effected by section 49, above, so far as relates to spirits deposited in distillery warehouses, consisted:

(1) In requiring the warehousing bond to be given in each case by the "distiller," and not by the "distiller or owner," as theretofore required;

(2) In requiring the bond to be conditioned for the payment of taxes at the rate imposed by the act (sec. 48), and within eight years from the date of original entry for deposit; and

(3) In providing for an annual warehousing bond (when the distiller so elects), in lieu of the monthly warehousing bond.

Depositing spirits in a Government warehouse does not make them the property of the Government or cause them to be held at the risk of the bailee. (*Farrell v. United States*, 99 U. S. (9 Otto), 221; 25 Int. Rev. Rec., 83; circuit court decision, 24 Int. Rev. Rec., 231.)

Spirits destroyed in warehouses by fire or other casualty, abatement or refund of taxes on. (Sec. 3221, p. 117.)

Spirits destroyed during transportation from a distillery warehouse to a port of export. (Act of Dec. 20, 1879, p. 223.)

Spirits destroyed during transportation from a distillery warehouse to a manufacturing warehouse. ([3433 b] sec. 15, Act of May 28, 1880, p. 336.)

Stockholders of a corporation engaged in distilling can not be accepted as sureties on the distillers' warehousing bond. (16 Op. Atty. Gen., 10; 24 Int. Rev. Rec., 153.)

Empty packages found in distillery warehouses. (28 Int. Rev. Rec., 189.)

Collection of tax on spirits not paid within the time fixed by the bond. (29 Int. Rev. Rec., 81; 30 ibid., 141, 165, 253, 261, 309; 31 ibid., 61, 197.)

Laches of officers does not relieve sureties. (See under sec. 3260a.)

Payment of the tax on forfeited spirits by the marshal out of proceeds of sale discharges liability of sureties on warehouse bond for tax. (*United States v. Ulrici*, 111 U. S., 38; 30 Int. Rev. Rec., 111; T. D. 1339 and T. D. 1385.) See *U. S. v. South Branch Distilling Co.*, 8 Biss. 162, Fed. Cas. 16359.

Withdrawal of spirits from warehouse by assignee. (Letter to Collector Mize, Oct. 14, 1895; 41 Int. Rev. Rec., 437.)

Equalizing spirits in warehouse. (*White Oak Distillery v. Sharp*, T. D. 1681.)

The destruction of spirits by fire in a warehouse constitutes a "removal" so as to make the tax payable before expiration of bonded period. (*United States v. Peace et al.* (1893), 53 Fed. Rep., 999.)

When a suit is brought on a distiller's warehousing bond for tax on spirits alleged to have been destroyed by fire in warehouse, defendants have the right, in the absence of fraud, collusion, or negligence, to make as a defense that the spirits were so destroyed and that no tax is due. (*Freeman v. U. S.* (U. S. circuit court of appeals, fourth circuit), 157 Fed Rep., 195.)

Distiller's warehousing bonds. (T. D. 1040, T. D. 1054.) Transportation and warehousing bonds may be executed in duplicate instead of triplicate. (T. D. 1548.)

Instructions relative to the preparation of bonds executed by guarantee or surety companies (T. D. 1382, June 24, 1908.)

Execution of bonds by agents or attorneys. (T. D. 780, T. D. 877.)

SEC. 3294 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327), and by sec. 5, act of May 28, 1880 (21 Stat., 145).] Withdrawal from warehouse, entry for.
Any distilled spirits may, on payment of the tax thereon, be withdrawn from warehouse on application to the collector of the district in charge of such warehouse, on making a withdrawal entry in duplicate, and in the following form:

ENTRY FOR WITHDRAWAL OF DISTILLED SPIRITS FROM WAREHOUSE.

Tax paid.

Entry of distilled spirits to be withdrawn, on payment of the tax, from warehouse of distillery number ——, situated in the —— district of ——, by ——, deposited on the —— day of ——, anno Domini ——, by ——, in said warehouse.

And the entry shall specify the whole number of casks or packages, with the marks and serial numbers thereon, the number of gauge or wine gallons, and of proof gallons and taxable gallons, and the amount of the tax on the distilled spirits contained in them at the time they were deposited in the distillery warehouse; and said entry shall also specify the number of gauge or wine gallons, and of proof gallons, and taxable gallons contained in said casks or packages at the time application shall be made for the withdrawal thereof; and on payment of the tax the collector shall issue his order to the storekeeper in charge of the warehouse for the delivery. One of said entries shall be filed in the office of the collector, and the other transmitted by him to the Commissioner of Internal Revenue.

[**SEC. 3294a.] [Sec. 50, of the act of Aug. 28, 1894. (28 Stat., 509.)]**] That the distiller of any distilled spirits deposited in any distillery warehouse, or special bonded warehouse, or in any general bonded warehouse established under the provisions of this Act, may, prior to the expiration of four years from the date of original gauge as to fruit brandy, or original entry as to all other spirits, file with the collector a notice giving a description of the packages containing the spirits, and request a regauge of the same, and thereupon the collector shall direct a gauger to regauge the spirits, and to mark upon each such package the number of gauge or wine gallons and proof gallons therein contained. If upon such regauging it shall appear that there has been a loss of distilled spirits from any cask or package, without the fault or negligence of the distiller thereof, taxes shall be collected only on the quantity of distilled spirits contained in such cask or package at the time of the withdrawal thereof from the distillery warehouse or other bonded warehouse: *Provided, however,*

Spirits withdrawn from warehouse may be regauged.

Allowance for leakage.

That the allowance which shall be made for such loss of spirits as aforesaid shall not exceed one proof gallon for two months or part thereof; one and one-half gallons for three and four months; two gallons for five and six months; two and one-half gallons for seven and eight months; three gallons for nine and ten months; three and one-half gallons for eleven and twelve months; four gallons for thirteen, fourteen, and fifteen months; four and one-half gallons for sixteen, seventeen, and eighteen months; five gallons for nineteen, twenty, and twenty-one months; five and one-half gallons for twenty-two, twenty-three, and twenty-four months; six gallons for twenty-five, twenty-six, and twenty-seven months; six and one-half gallons for twenty-eight, twenty-nine, and thirty months; seven gallons for thirty-one, thirty-two, and thirty-three months; seven and one-half gallons for thirty-four, thirty-five, and thirty-six months; eight gallons for thirty-seven, thirty-eight, thirty-nine, and forty months; eight and one-half gallons for forty-one, forty-two, forty-three, and forty-four months; nine gallons for forty-five, forty-six, forty-seven, and forty-eight months; and no further allowance shall be made: *And provided further*, That in case such spirits shall remain in warehouse after the same have been regauged, the packages containing the spirits shall, at the time of withdrawal from warehouse and at such other times as the Commissioner of Internal Revenue may direct, be again regauged or inspected; and if found to contain a larger quantity than shown by the first regauge, the tax shall be collected and paid on the quantity contained in each such package as shown by the original gauge: *And provided further*, That taxes shall be collected on the quantity contained in each

Act of Mar. 3, 1899. cask or package as shown by the original gauge, where the distiller does not request a regauge before the expiration of *seven* years from the date of original entry or gauge:

Act of Jan. 13, 1903. *Provided also*, That the foregoing allowance of loss shall apply only to casks or packages of a capacity of forty or more wine gallons, and that the allowance for loss on casks or packages of less capacity than forty gallons shall not exceed one-half the amount allowed on said forty-gallon cask or package; but no allowance shall be made on casks or packages of less capacity than twenty gallons: *And provided further*, That the proof of such distilled spirits shall not in any case be computed at the time of withdrawal at less than one hundred per centum.

Regulations governing the short method of withdrawing spirits from internal-revenue bonded warehouses. (T. D. 18998, 1898.)

Method of expediting withdrawals of spirits from distillery warehouses in certain cases. (T. D. 18778, 1898.)

Second regauge upon withdrawal of spirits from bonded warehouses by distillers—when required. (T. D. 19061, 1898.)

Withdrawal of domestic spirits. When and how request for regauge of spirits in bond less than four years may be made. (T. D. 19125, 1898.)

Explaining the provisions of section 50, act of August 28, 1894, as to the regauging of distilled spirits. (Cir. No. 463, July 6, 1896; 42 Int. Rev. Rec., 297.)

Requiring collectors of internal revenue to certify to the authenticity of the signatures to requests for regauge of spirits under section 50. (Cir. No. 468, Aug. 29, 1896; 42 Int. Rev. Rec., 373.)

Description of packages of spirits in notice and request for regauge under section 50. (Circular Letter No. 474, Apr. 2, 1897; 43 Int. Rev. Rec., 149.)

Delay in filing application for regauge. (Cir. No. 645; T. D. 687.)

Excessive losses of distilled spirits in bonded warehouses. (Cir. No. 625, revised; T. D. 1689; Reg. No. 20, revised, art. 32, p. 19.)

No allowance can be made for additional outage occurring after the first regauge, even where the spirits are to be exported. (T. D. 18994, 1898.)

Transfer of distilled spirits to general bonded warehouse; losses adjusted. (T. D. 1320.)

Visits of general storekeepers and gaugers in charge of distillery warehouses to detect excessive losses of distilled spirits. (T. D. 461, Jan. 14, 1902.)

[SEC. 3294b] SEC. 1. [Act of Mar. 3, 1899 (30 Stat., 1349)]. That under the conditions and limitations imposed by section fifty of the Act of August twenty-eighth, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the support of the Government, and for other purposes," allowance for loss shall be made as to all distilled spirits produced and originally gauged for deposit prior to January first, eighteen hundred and ninety-nine, and which lawfully remain in any internal-revenue bonded warehouse, after the expiration of the period of forty-eight months from the date of original gauge: *Provided, however,* That the allowance for loss herein authorized shall not exceed nine and one-half gallons for forty-nine, fifty, fifty-one, and fifty-two months; ten gallons for fifty-three, fifty-four, fifty-five, and fifty-six months; ten and one-half gallons for fifty-seven, fifty-eight, fifty-nine, and sixty months; eleven gallons for sixty-one, sixty-two, sixty-three, and sixty-four months; eleven and one-half gallons for sixty-five, sixty-six, sixty-seven, and sixty-eight months; twelve gallons for sixty-nine, seventy, seventy-one, and seventy-two months; twelve and one-half gallons for seventy-three, seventy-four, seventy-five, and seventy-six months; thirteen gallons for seventy-seven, seventy-eight, seventy-nine, and eighty months; and thirteen and one-half gallons for eighty-one, eighty-two, eighty-three, and eighty-four months, and no further allowance shall be made.

SEC. 2. That the allowance for loss herein provided shall be ascertained by regauge on request of distiller before the expiration of eighty-four months from date of original gauge, and shall apply to spirits remaining in any internal-revenue bonded warehouse which shall have been regauged heretofore under the provisions of section fifty of the said Act of August twenty-eighth, eighteen hundred and ninety-four: *Provided,* That for the regauge of spirits

Allowance for
loss.

Allowance to
be ascertained
by regauge.

Time for re-gauge. originally gauged for deposit on or before the first day of March, eighteen hundred and ninety-two, the request of the distiller for a regauge under the provisions of this Act may be made at any time before the first day of May, eighteen hundred and ninety-nine.

Regauge of bonded spirits on request of distiller under the provisions of section 50, act of August 28, 1894, as amended by act of March 3, 1899. (Int. Rev. Cir. No. 525, Mar. 9, 1899; T. D. No. 20836.)

When requests for regauge must be filed under act of March 3, 1899. If requests are seasonably filed no injury will result to distiller by reason of delay in regauge. (T. D. No. 20948, 1899.)

The maximum allowance for each of the periods named in the case of a cask or package of 40 or more wine-gallons' capacity may be stated in tabular form as follows:

Not to exceed—

1 proof gallon for 2 months or part thereof.
1½ gallons for more than 2 months and not more than 4 months.
2 gallons for more than 4 months and not more than 6 months.
2½ gallons for more than 6 months and not more than 8 months.
3 gallons for more than 8 months and not more than 10 months.
3½ gallons for more than 10 months and not more than 12 months.
4 gallons for more than 12 months and not more than 15 months.
4½ gallons for more than 15 months and not more than 18 months.
5 gallons for more than 18 months and not more than 21 months.
5½ gallons for more than 21 months and not more than 24 months.
6 gallons for more than 24 months and not more than 27 months.
6½ gallons for more than 27 months and not more than 30 months.
7 gallons for more than 30 months and not more than 33 months.
7½ gallons for more than 33 months and not more than 36 months.
8 gallons for more than 36 months and not more than 40 months.
8½ gallons for more than 40 months and not more than 44 months.
9 gallons for more than 44 months and not more than 48 months.
9½ gallons for more than 48 months and not more than 52 months.
10 gallons for more than 52 months and not more than 56 months.
10½ gallons for more than 56 months and not more than 60 months.
11 gallons for more than 60 months and not more than 64 months.
11½ gallons for more than 64 months and not more than 68 months.
12 gallons for more than 68 months and not more than 72 months.
12½ gallons for more than 72 months and not more than 76 months.
13 gallons for more than 76 months and not more than 80 months.
13½ gallons for more than 80 months and not more than 84 months.

The maximum allowance for loss on casks or packages of less capacity than 40 wine gallons and not less than 20 wine gallons is limited to one-half the amounts stated in the above table.

AN ACT To amend the internal-revenue laws. Approved, January 13, 1903. (32 Stat., 770.)

Outage.

That all distilled spirits now in internal-revenue bonded warehouses or which may hereafter be produced and deposited in such warehouses shall be entitled to the same allowance for loss from leakage or evaporation which now exists in favor of distilled spirits produced, gauged, and so deposited prior to January first, eighteen hundred and ninety-nine, and subject to the same conditions and limitations.

This act extends the allowance for leakage to all distilled spirits in bond, and is amendatory of the act of March 3, 1899 (30 Stat., 1349.)

Fault or negligence in connection with loss of distilled spirits in bonded warehouses. (Cir. No. 328; 35 Int. Rev. Rec., 190.)

Regulations concerning the tare of spirit packages. (Cir. No. 675, Nov. 7, 1905. T. D. 942.)

GENERAL BONDED WAREHOUSES FOR DISTILLED SPIRITS OTHER THAN
FRUIT BRANDY. ACT OF AUGUST 28, 1894. (28 Stat., 509.)

SEC. 51. That the Commissioner of Internal Revenue shall be, and is hereby, authorized, in his discretion and upon the execution of such bond as he may prescribe, to establish one or more warehouses, not exceeding ten in number in any one collection district, to be known and designated as general bonded warehouses, and to be used exclusively for the storage of spirits distilled from materials other than fruit, each of which warehouses shall be in the charge of a storekeeper or storekeeper and gauger to be appointed, assigned, transferred, and paid in the same manner as such officers for distillery warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under the control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery warehouses; and such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

SEC. 52. That any distilled spirits made from materials other than fruit, and lawfully deposited in a distillery warehouse, may, upon application of the distiller thereof, be removed from such distillery warehouse to any general bonded warehouse established under the provisions of the preceding section; and the removal of said spirits to said general bonded warehouse shall be under such regulations, and after making such entries and executing and filing with the collector of the district in which the spirits were manufactured, such bonds and bills of lading, and the giving of such other additional security, as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

SEC. 53. That all spirits intended for deposit in a general bonded warehouse, before being removed from the distillery warehouse, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner.

SEC. 54. That any spirits removed in bond as aforesaid may, upon its arrival at a general bonded warehouse, be deposited therein upon making such entries, filing such bonds and other securities, and under such regulations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Not over ten in one district.

In charge of storekeeper or storekeeper and gauger.

Under control of collector.

In joint custody of storekeeper and proprietor. Not to be unlocked or opened except, etc.

Regulations.

Distiller may remove spirits from distillery warehouse, to general bonded warehouse.

Stamp to be affixed before removal.

How spirits may be deposited in a general bonded warehouse.

Tax shall be paid within eight years from the date of original entry into distillery warehouse. It shall be one of the conditions of the warehousing bond covering such spirits that the principal named in said bond shall pay the tax on the spirits as specified in the entry or cause the same to be paid within eight years from the date of the original entry of the same into the distillery warehouse, and before withdrawal, except as hereinafter provided.

Only one withdrawal for transportation to another warehouse.

SEC. 55. That any spirits may be withdrawn once and no more from one general bonded warehouse for transportation to another general bonded warehouse, and when intended to be so withdrawn, shall have affixed thereto another general bonded warehouse stamp indicative of such intention; and the withdrawal of such spirits, and their transfer to and entry into such general bonded warehouse shall be under such regulations and upon the filing

of notices, entries, bonds, bills of lading as the Commissioner of Internal Revenue, with the approval of transfer.

Bonds to be given by distillers, and may be renewed. to the Secretary of the Treasury, may, from time to time, prescribe; and the bonds covering spirits in general bonded warehouses shall be given by distillers of the spirits, and shall be renewed at such times as the Commissioner of Internal Revenue may, by regulations, require.

Exportation free of tax.

SEC. 56. That the provisions of existing law in regard to the withdrawal of distilled spirits from warehouses upon

transfers to manufacturing warehouse and manufacturing warehouse, and as to the gauging, marking, branding, and stamping of the spirits upon such withdrawals, and in regard to withdrawals for the use of the United States or scientific institutions.

United States or scientific institutions or colleges of learning, including the provisions for allowance for loss by

Loss by accidental fire or other unavoidable accident, are hereby extended and made applicable to spirits deposited in general bonded warehouses under this act.

Under section 56 of the act of August 28, 1894, providing for the establishment of general bonded warehouses, the provisions for allowance for loss by fire or other unavoidable accident do not extend to the case of such a loss while spirits are in transit from a distillery warehouse to a general bonded warehouse. (Greenbrier Distillery Co. v. Johnson, 88 Fed. Rep., 638.)

Transfer from distillery warehouse to general bonded warehouse. SEC. 57. Whenever distilling shall have been suspended at any distillery for a period or periods aggregating six months during any calendar year, and the quantity of spirits remaining in the distillery warehouse does not exceed five thousand proof gallons, or whenever, in the opinion of the Commissioner of Internal Revenue, any distillery warehouse or general bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein safe or unfit for to be transferred to such other warehouse as he may desire, etc.

Provisions originate, and within such time as he may prescribe; and all section 327, R. S., made applicable to two of the Revised Statutes of the United States relating

to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers to or from general bonded warehouses established under this act.

SEC. 58. The tax upon any distilled spirits removed from a distillery warehouse for deposit in a general bonded warehouse, and in respect of which any requirement of this act is not complied with, shall, at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and upon the neglect of payment by the distiller shall proceed to collect the same by distressment. But this provision shall not exclude any other remedy or proceeding provided by law to enforce the payment of the tax. If it shall appear at any time that there has been a loss of distilled spirits from any cask or package deposited in a general bonded warehouse or special bonded warehouse, other than the loss provided for in section thirty-two hundred and twenty-one of the Revised Statutes of the United States, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such cask or package of distilled spirits and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, less only the allowance for loss provided by law. If the said tax is not paid on demand the collector shall report the amount due, as shown by the original gauge, upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

SEC. 59. That in case any distilled spirits removed from a distillery warehouse for deposit in a general bonded warehouse shall fail to be deposited in such general bonded warehouse within ten days after such removal, or within the time specified in any bond given on such removal, or if any distilled spirits deposited in any general bonded warehouse shall be taken therefrom, for export or otherwise, without full compliance with the provisions of this act, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, or if any distilled spirits which have been deposited in a general bonded warehouse shall be found elsewhere, not having been removed therefrom according to law, any person who shall be guilty of such failure, or any person who shall in any manner violate any provision of the next preceding eleven sections of this act, shall be subject, on conviction, to a fine of not less than one hundred dollars nor more than five thousand dollars, or to imprisonment for not less than three months nor more than three years for every such failure or viola-

When tax may
be assessed and
collected by dis-
tressment.

In case of ex-
cessive loss in
casks in ware-
houses Commis-
sioner may di-
rect collector to
demand tax, and
if tax unpaid
may assess.

Penal provi-
sions as to of-
fenses specified.

tion; and the spirits as to which such failure or violation, or unlawful removal shall take place shall be forfeited to the United States.

Regulations, No. 20, relative to the establishment of general bonded warehouses, for the storage of spirits made from material other than fruit.

Supplement No. 1, relative to the bonding of distilled spirits in general bonded warehouses.

Bills of lading. (T. D. 1533.)

SPECIAL BONDED WAREHOUSES FOR FRUIT BRANDY.

[Act of March 3, 1877 (19 Stat., 393).]

The provisions of this act were extended and made applicable to brandy distilled from apples or peaches, or from any other fruit, by the act of October 18, 1888. (25 Stat., 560.) See p. 195.

SEC. 1. That the Commissioner of Internal Revenue shall be, and hereby is, authorized in his discretion, and upon the execution of such bonds as he may prescribe, to

Not over ten in one district.

In charge of storekeeper.

Under control of collector.

In joint custody of storekeeper and proprietor. Not to be unlocked or opened except, etc.

Regulations.

Distiller to pay tax on rendering monthly return, or may remove brandy in bond to special bonded warehouse.

establish warehouses, to be known as special bonded warehouses, not exceeding ten in number in any one collection-district, exclusively for the storage of brandy made from grapes, each of which warehouses shall be in the charge of a storekeeper, to be appointed, assigned, transferred, and paid in the same manner that storekeepers for distillery-warehouses are now appointed, as signed, transferred, and paid. Every such warehouse

shall be under the control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and the proprietor thereof and kept securely locked, and shall

at no time be unlocked or opened or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery-warehouses. And such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

SEC. 2. That every distiller of brandy from grapes, upon rendering his monthly return of materials used and spirits produced by him, shall immediately pay the tax upon such spirits, or may, after they have been properly gauged, marked, and branded, under regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, and also stamped as hereinafter provided, cause them to be removed in bond from the place of manufacture to a special bonded warehouse, under such regulations, and after making such entries, and executing and filing with the collector of the district in which such spirits were manufactured such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Bond to be conditioned under act August 28, 1894, for payment of tax at \$1.10 per gallon within eight years from date of original gauge. See p. 183.

SEC. 3. That all brandy intended for deposit in a special bonded warehouse, before being removed from the distillery, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner. * * *

Stamp to be affixed before removal.

The act of May 28, 1880 (21 Stat., 145), repealed the provision charging 10 cents for these stamps.

SEC. 4. [as amended by sec. 49, act of Aug. 28, 1894 (28 Stat., 509).] That any brandy made from grapes removed in bond according to law may, upon its arrival at a special bonded warehouse, be deposited therein upon making such entries, filing such bonds and other securities, and under such regulations as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. It shall be one of the conditions of the warehousing-bond covering such spirits that the principal named in said bond shall pay the tax on the spirits as specified in the entry, or cause the same to be paid within *eight* years from the date of the original gauging of the same, and before withdrawal, except as hereinafter provided.

How brandy may be deposited in the warehouse.

SEC. 5. That any brandy made from grapes may be withdrawn once and no more from one special bonded warehouse for transportation to another special bonded warehouse; and such brandy shall, on its arrival at the second special bonded warehouse, be immediately entered therein, from which warehouse it shall be withdrawn only on payment of the tax or for immediate exportation. In case the brandy withdrawn is intended for deposit in another special bonded warehouse, an additional stamp, indicative of such intention, shall be affixed to each package withdrawn, as in the case of brandy withdrawn from a distillery intended to be so deposited. And in case the brandy is intended for exportation, an engraved stamp indicative of such intention, shall be affixed to each package so removed, as in the case of spirits withdrawn from a distillery bonded warehouse for exportation, under the provisions of section thirty-three hundred and thirty, Revised Statutes: all the provisions of which section not inconsistent with this act are hereby made applicable to such withdrawals. And all withdrawals authorized by law of grape-brandy from any special bonded warehouse shall be upon making such withdrawal entries, and under such regulations, and unless the withdrawal is upon payment of tax, upon the execution of such bonds and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Export bonds given under the provisions of this act shall be canceled upon the production of such certificates of landing as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may

Tax shall be paid within eight years from date of original gauge.

Only one withdrawal for transportation to another warehouse.

In such case, additional stamp to be affixed.

Export stamp, etc., on exportation.

Provisions of sec. 3330, R. S., page 220, made applicable.

How withdrawal also to be made.

Export bonds how canceled.

Provisions of Commissioner of Internal Revenue. And the provisions page 117, as to existing law relative to an allowance of loss by casualty made applicable in a distillery bonded warehouse are hereby made applicable to brandy stored in special bonded warehouses, in accordance with the provisions of this act.

As to regauge of spirits withdrawn from warehouse, allowance for leakage, etc., see section 3294a and 3294b.

Exportation free of tax. SEC. 6. That the provisions of existing law in regard to the exportation of distilled spirits are hereby extended so as to permit the exportation from special bonded warehouses of grape brandy free of tax in any original cask containing not less than twenty gallons, and for the exportation of grape brandy upon which all taxes have been paid, with the privilege of drawback in quantities of not less than one hundred gallons, and in the distillers' original cask, containing not less than twenty nine gallons each.

Twenty wine gallons undoubtedly intended, instead of "twenty nine gallons," as in the act. It was probably an error in engrossing.

See section 3329, page 217, and section 3330, page 220.

Warehouse may be discontinued, etc. SEC. 7. That whenever, in the opinion of the Commissioner of Internal Revenue, any special bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may discontinue such warehouse, and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe; and all the provisions of section thirty two hundred and seventy two of the Revised Statutes of the United States, relating to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers from special bonded warehouses.

When tax may be assessed and collected by distraint. SEC. 8. That the tax upon any brandy distilled from grapes, removed from the place where it was distilled, and in respect of which any requirement of this act is not complied with, shall at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

Tax must be paid within eight years. SEC. 9. That nothing in this act shall be construed as extending the time in which the tax on brandy made from grapes shall be paid beyond three [eight] years from the day on which the taxable quantity is ascertained by the gauger; and all brandy made from grapes, found elsewhere than in a distillery or special bonded warehouse, not having been removed therefrom according to law, and all brandy on which the tax has not been paid within three [eight] years

Forfeiture.

of the date of the original gauging shall be forfeited to the United States.

Bonding period changed from three years to eight years by section 49, act of August 28, 1894. (See p. 193.)

SEC. 10. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful rules and regulations for carrying into effect the provisions of this act, and such regulations when made shall have all the force and effect of law. Regulations to have the force and effect of law.

SEC. 11. That in case any grape brandy removed from the distillery for deposit in a special warehouse, shall fail to be deposited in such warehouse within ten days thereafter, or within the time specified in any bond given on such removal, or if any grape brandy deposited in any special warehouse shall be taken therefrom for deposit in another warehouse, or for export, or otherwise, without full compliance with the provisions of this act, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, then any person who shall be guilty of such failure, and any person who shall in any manner violate any provision of this act, or of the regulations made in pursuance thereof, shall be subject, on conviction, to a fine of not less than one hundred dollars nor more than five thousand dollars, and to imprisonment for not less than three months nor more than three years, for every such failure or violation; and the spirits as to which such failure or violation shall take place shall be forfeited to the United States. Penal provisions as to offenses specified.

Proprietors of special bonded warehouses may (except in case of tax-paid withdrawals) decline to deliver brandy stored in such warehouses until the warehouse receipts issued by them are surrendered, where the surrender of such receipts, before delivery of the spirits, is required by law. (T. D. 714.)

AN ACT To provide for warehousing fruit brandy.

[Act of October 18, 1888 (25 Stat., 560).]

That the provisions of an act entitled "An act relating to the production of fruit brandy, and to punish frauds connected with the same," approved March third, eighteen hundred and seventy-seven, be extended and made applicable to brandy distilled from apples or peaches, or from any other fruit the brandy distilled from which is not now required or hereafter shall not be required to be deposited in a distillery warehouse: *Provided*, That each of the warehouses established under said act, or which may hereafter be established, shall be in charge either of a storekeeper or of a storekeeper and gauger, at the discretion of the Commissioner of Internal Revenue. Extension of provisions of Act of March 3, 1877.

Regulations, No. 5, revised—Concerning special-bonded warehouses for storage of brandy made from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, or prunes, exclusively.

Storekeeper and gauger is now styled storekeeper-gauger. Act of June 28, 1902.

Gauging, stamping, and branding spirits removed 201.)]

SEC. 3295. [Amended by act of July 16, 1892 (27 Stat., 1892, c. 101, § 12, p. 113) which removed the words "Gauging, stamping, and branding spirits removed 201.)".] Whenever an order is received from the collector for the removal from any distillery warehouse of any cask of distilled spirits on which tax has been paid, the gauger by whom the same is gauged and inspected shall, in presence of the storekeeper and before such cask has left the warehouse, place upon the head thereof, in such manner as to cover no portion of any brand or mark prescribed by law already placed thereon, a stamp, on which shall be engraved the number of proof gallons contained in said cask on which the tax has been paid, and which shall state the serial number of the cask, the name of the person by whom the tax was paid, and the person to whom and the place where it is to be delivered. Said stamp shall be signed by the collector of the district, the storekeeper and gauger, and shall be as follows:

Tax-paid stamp, No. —.
Received _____, 18_____, from _____, tax on
_____ gallons proof spirit, cask No. —, _____ warehouse at
_____ for delivery to _____, at _____.

Collector — District, State of —.

Attest:

United States Storekeeper.

United States Gauger.

And at the time of affixing the tax-paid stamp the gauger shall, in the presence of the storekeeper, cut or burn upon each cask the name of the distiller, the district, the date of the payment of the tax, the number of proof-gallons, and the number of the stamp, which cutting or burning shall be erased when such cask is emptied.

The last words of section 3295, namely, "by cutting or burning a canceling line across such marks or brands," were struck out by amendatory act of July 16, 1892.

Alleged infringement of patent in the use of stamps. (Fletcher v. Blake, 27 Int. Rev. Rec., 6; Hollister v. Benedict and Burnham Manufacturing Co., 113 U. S., 59; 31 Int. Rev. Rec., 30.)

Regulations relative to the signing of stamps. (Regulations, No. 7, pp. 114, 117, 123, 132.)

Regulations concerning the affixing of stamps to heads of spirit packages. (Circular No. 535, May 26, 1899.)

In the case of spirit packages, the heads of which are in three parts, the Government stamp, or stamps, required to be placed upon the same, will be affixed across a joint, or joints, of the head in such a manner that each stamp shall rest over a joint at about the middle of the stamp, and so that the center piece of the head may not be removed without destroying the stamp or stamps. (Regulations, No. 7, p. 163.)

Regulations concerning reduction in proof of distilled spirits in distillers' original packages. (Regulations, No. 7, pp. 190-195.)

The tax-paid stamps issued by collectors for the payment of taxes on distilled spirits are nothing more than receipts, and are worthless as receipts to other parties than those to whom they are issued. (Woolner v. United States, 13 Ct. Cls., 355; 24 Int. Rev. Rec., 181.)

SEC. 3296. Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse, or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals or aids in the concealment of any spirits so removed he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

Sections 3256, 3279, 3299, 3450.

Aiding or abetting. (*United States v. Blaisdell et al.*, 9 Int. Rev. Rec., 82.)

A conviction, under section 3296, for removing distilled spirits to a place other than a distillery warehouse, or concealing them there contrary to law, is not a bar to a conviction under section 3281 for illicit distilling, because the same are different offenses; and the question of being twice in jeopardy, within the Constitution, amendment 5, does not arise. (*United States v. Three Copper Stills, etc.* (1890), 47 Fed. Rep., 495.)

The fact that the statute makes the aiding and abetting of another in the removal of illicit spirits a distinct offense does not prevent a person so aiding and abetting from being convicted as a principal in the removal, under the rule making all participants in misdemeanors liable as principals. (*United States v. Sykes*, 58 Fed. Rep., 1000.) Sec. 332, Criminal Code, p. 110.

An indictment under this section for the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law, which charges the performance of that act at a particular time and place, and in the language of the statutes is sufficiently certain. (*Pounds v. United States*, 171 U. S., 35.)

See *United States v. Smith*, 27 Fed. Rep., 854.

(*Pilcher v. U. S.*, 113 Fed. Rep., 248; *U. S. v. Harries*, 26 Fed. Cas., 166, No. 15309; *U. S. v. Nunnemacher*, 27 Fed. Cas., 197, No. 15902.)

Bond may be sued for these penalties. (*United States v. Chouteau*, 102 U. S., 603; 27 Int. Rev. Rec., 49.)

SEC. 3297. The Secretary of the Treasury is authorized to grant permits to any incorporated or chartered scientific institution or college of learning to withdraw alcohol in specified quantities from bond without payment of the internal-revenue tax on the same, or on the spirits from which the alcohol has been distilled, for the sole purpose of preserving specimens of anatomy, physiology, or natural history belonging to such institution, or for use in its chemical laboratory: *Provided*, That application for permits shall be made by the president or curator of such institution, who shall file a bond for double the amount of the tax on the alcohol to be withdrawn, with two good and sufficient sureties, to be approved by the Commissioner of Internal Revenue, and conditioned that the whole quantity of alcohol so withdrawn from bond shall be used for

Removal, concealment, etc., of spirits contrary to law; penalty.

Alcohol withdrawn for scientific purposes by incorporated or chartered institutions.

Penalty.

the purposes above specified, and for no other, and that the said president or curator shall comply with such other requirements and regulations as the Secretary of the Treasury may prescribe. And if any alcohol so obtained is used by any officer, as aforesaid, of such institution for any purposes other than that above specified, then the said officer or sureties shall pay the tax on the whole amount of alcohol withdrawn from bond, together with a like amount as a penalty in addition thereto.

Alcohol withdrawn for scientific purposes by institutions not incorporated. [SEC. 3297a]. [*Act of May 3, 1878 (20 Stat., 48)*]. That the Secretary of the Treasury be, and is hereby authorized to grant permits, as provided for in section thirty-two hundred and ninety-seven of the Revised Statutes of the United States passed at the first session of the Forty-third Congress, to any scientific university, or college of learning created and constituted such by any State or Territory under its laws, though not incorporated or chartered, upon the same terms and subject to the same restrictions and penalties, already provided by said section thirty-two hundred and ninety-seven: *Provided further*, That the bond required thereby may be executed by any officer of such university or college, or by any other person for it, and on its behalf, with two good and sufficient sureties, upon like conditions, and to be approved as by said section is provided.

Regulations, No. 7, Revised, p. 238, and Revised Circular, January 14, 1908; Dept. No. 5.

See section 3464, page 367.

Alcohol is the only kind of spirit that can be used free of tax for scientific purposes. (T. D. 21664, 1899.)

Alcohol classified and branded as "commercial alcohol" may be withdrawn from bond, free of tax, under the provisions of section 3297, for scientific purposes. (T. D. 1483, Apr. 14, 1909.)

Power of officers to detain packages on suspicion.

SEC. 3298. It shall be lawful for any internal-revenue officer to detain any cask or package containing, or supposed to contain, distilled spirits, when he has reason to believe that the tax imposed by law upon the same has not been paid, or that the same is being removed in violation of law; and every such cask or package may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than forty-eight hours without process of law or intervention of the officer to whom such detention is to be reported.

Forfeiture of spirits unlawfully removed from distillery or distillery warehouse. SEC. 3299. All distilled spirits found elsewhere than in a distillery or *distillery warehouse*, not having been removed therefrom according to law, shall be forfeited to the United

Act Feb. 18, 1875.

If agent is cognizant of fraud at time of purchase, the principal is bound. Confusion and mixture of goods by rectification. (Harrington's Distilled Spirits, 11 Wall., 356; 13 Int. Rev. Rec., 193.)

Burden of proof. (Sec. 3333, p. 225. *United States v. Eight Casks of Whisky*, 7 Int. Rev. Rec., 4.)

SEC. 3300. Whenever any store-keeper or other person in the employment of the United States, having charge of a bonded warehouse, removes or allows to be removed therefrom any cask or other package, without an order or permit of the collector, or which has not been marked or stamped in the manner required by law, or removes or allows to be removed any part of the contents of any cask or package deposited therein, he shall be immediately dismissed from office or employment, and be fined not less than five hundred dollars nor more than two thousand dollars, and imprisoned not less than three months nor more than two years.

Store-keeper unlawfully removing spirits or allowing same to be removed, etc.

SEC. 3301 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327)]. Every storekeeper shall keep a warehouse-book, which shall at all times be open to the examination of any revenue officer, and shall enter therein an account of all articles deposited in the warehouse to which he is assigned, indicating in each case the date of deposit, by whom manufactured or produced, the number and description of the packages and contents, the quantities therein, the marks and serial numbers thereon, and by whom gauged, inspected, or weighed, and if distilled spirits, the number of gauge or wine gallons, of proof-gallons, and of taxable gallons; and before delivering any article from the warehouse he shall enter in said book the date of the permit or order of the collector for the delivery of such articles, the number and description of the packages, the marks and serial numbers thereon, the date of delivery, to whom delivered, and for what purpose, which purpose shall be specified in the permit or order for delivery; and in case of delivery of any distilled spirits the number of gauge or wine gallons, of proof-gallons, and of taxable gallons shall also be stated; and such further particulars shall be entered in the warehouse-books as may be prescribed or found necessary for the identification of the packages, to insure the correct delivery thereof and proper accountability therefor.

Store-keepers' warehouse-books.

And every store-keeper shall furnish daily to the collector of the district a return of all articles received in and delivered from the warehouse during the day preceding that on which the return is made, and mail at the same time a copy thereof to the Commissioner of Internal Revenue, and shall, on the first Monday of every month, make a report in duplicate of the number of packages of all articles, with the respective descriptions thereof, as above provided, which remained in the warehouse at the date of his last report, of all articles received therein and delivered therefrom during the preceding month, and of articles remaining therein at the end of said month. He shall deliver one of these reports to the collector having control of the warehouse, to be recorded and filed in his office, and transmit one to the Commissioner of Internal Revenue, to be recorded and filed in his office.

Store-keepers' returns and reports.

The reports made by a distiller, or by storekeepers or other officers, to a collector under the internal-revenue laws are in no

sense public records, but are executive documents, which the United States in its sovereign capacity has acquired for the sole purpose of administering its own governmental affairs, and are its private property, the custody and use of which the Secretary of the Treasury, has the lawful authority to control by proper regulations. (In re Comingore, collector (1899), 96 Fed. Rep., 552; T. D. 21584; Boske *v.* Comingore, 177 U. S., 459, T. D. 104.)

Store - keepers to have charge of distillery and warehouse shall, in addition to the duties required of him to keep accounts of materials used, as store-keeper in charge of a warehouse, keep in a book etc.

SEC. 3302. The store-keeper assigned to any distillery to be provided for that purpose, and in the manner prescribed by the Commissioner of Internal Revenue, a daily account of all the meal and vegetable productions or other substances brought into said distillery, or on said premises, to be used for the purpose of producing spirits, from whom purchased, and when delivered at said distillery; of the kind and quantity of all fuel used, and from whom purchased; of all repairs made on said distillery, and by whom and when made; of the names and places of residence of all persons employed in or about the distillery; of the materials put into the mash-tub or otherwise used for the production of spirits; of the time when any fermenting-tub is emptied of ripe mash or beer, recording the same by the number painted on said tub; and of all spirits drawn off from the receiving-cistern, and the time when the same were drawn off.

Examination of grain distilleries and duties of examining officers. (Cir. No. 612. T. D. 439.)

Records at registered distilleries.—Collectors are instructed to give personal attention to records kept by storekeepers and store-keeper-gaugers, particularly grain account and temperature and gravity reports. (T. D. 1628.)

Distiller's books, entries to be made.

SEC. 3303. Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or who uses any such still, boiler, or other vessel, shall from day to day make, or cause to be made, in a book or books, to be kept by him in such form as the Commissioner of Internal Revenue may prescribe, a true and exact entry of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the distillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distilling-apparatus, the cost thereof, and by whom and when made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed. And in another book he shall make like entry of the quantity of grain or other material used for the production of spirits, the time of day when any yeast or other composition is put into any mash or beer for the purpose of exciting

fermentation, the quantity of mash in each tub, designating the same by the number of the tub, the number of dry inches, that is to say, the number of inches between the top of each tub and the surface of the mash or beer therein at the time of yeasting, the gravity and temperature of the beer at the time of yeasting, and on every day thereafter its quantity, gravity, and temperature at the hour of twelve meridian; also, of the time when any fermenting-tub is emptied of ripe mash or beer, the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

SEC. 3304. The books of every distiller hereinafter required shall always be kept at the distillery and be always open to the inspection of any revenue officer, and, when filled up, shall be preserved by the distiller for a period of not less than two years thereafter, and whenever required shall be produced for the inspection of any revenue officer.

The books of a distiller required by law to be kept can be seized and used as evidence. "The United States have the right to demand their production without judicial process for all purposes connected with the revenue liabilities of the distillers or the distilleries." (Waite, *C. J.*, in the United States Circuit Court, Eastern District of Virginia. *United States v. A Distillery at Petersburg*, 1 Hughes, 533; 22 Int. Rev. Rec., 195.)

Distillers' books. Every book kept by a distiller is, to a certain extent, a Government book, and may, under the law, be rightfully examined by the revenue officers to determine its correctness. (*United States v. Parker, Mason & Co., and Roelle, Junker & Co.*, 21 Int. Rev. Rec., 245; 6 Biss., 350.)

Private books and papers seized at distillery can be used as evidence in proceedings to forfeit distillery. (*Dobbins v. United States*, 24 Int. Rev. Rec., 22; 96 U. S., 395.)

SEC. 3305. Whenever any false entry is made in, or any entry required to be made is omitted from, either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling-apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or willfully fails to

False entries,
omitting to keep
or produce books;
penalty.

produce such books, or either of them, shall be fined not less than five hundred dollars, nor more than five thousand dollars, and imprisoned not less than six months, nor more than two years.

See United States *v.* One Water Cask, 10 Int. Rev. Rec., 93; United States *v.* Stowell, 133 U. S., 1; 36 Int. Rev. Rec., 30.)

Using false weights or measures; penalty. SEC. 3306. Every person who knowingly uses any false weights or measures in ascertaining, weighing, or measuring the quantities of grain, meal, or vegetable materials, molasses, beer, or other substances to be used for distillation, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years. Any person

Using unregistered materials; penalty. who uses any molasses, beer, or other substance, whether fermented on the premises or elsewhere, for the purpose of producing spirits, before an account of the same is registered in the proper book provided for that purpose, shall forfeit and pay the sum of one thousand dollars for each offense so committed.

Distiller's bond, suit to recover penalty. (U. S. *v.* Zemel, 137 Fed. Rep., 989.)

Distillers' returns of production to collector. SEC. 3307. On the first day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of wine-gallons and of proof-gallons of spirits produced and placed in warehouse. And the distiller or the principal manager of the distillery shall make and subscribe the following oath, to be attached to said return:

"I, _____, distiller (or principal manager, as the case may be) of the distillery at _____, do solemnly swear that, since the date of the last return of the business of said distillery, dated _____ day of _____ to _____ day of _____, both inclusive, there was produced in said distillery, and withdrawn and placed in warehouse, the number of wine-gallons and proof-gallons of spirits; and there were actually mashed and used in said distillery, and consumed in the production of spirits therein, the several quantities of grain, sugar, molasses, and other materials respectively hereinbefore specified, and no more."

One of the said duplicate returns shall be transmitted by the collector to the Commissioner of Internal Revenue.

Fruit distillers' returns, Form 15. (Regulations No. 7, p. 215.)

Distillers' returns of the number of barrels distilled. SEC. 3308. Every distiller shall make a return of the number of barrels of spirits distilled by him, counting forty gallons of proof-spirits to the barrel, whenever such return is demanded by the collector of the district.

Monthly examination of distillers' returns, assessments, etc. SEC. 3309, *as amended.* On the receipt of the distiller's return in each month, the Commissioner of Internal Revenue shall inquire and determine whether the distiller has accounted for all the grain or molasses used, and all the spirits produced by him in the preceding month. If he is satisfied that the distiller has reported all the spirits produced by him, and the quantity so reported is found to be

Capacity tax.

less than eighty per centum of the producing-capacity of the distillery as estimated according to law, he shall make an assessment for such deficiency at the rate of *ninety* cents for every proof-gallon. In determining the quantity of grain used, fifty-six pounds shall be accounted as a bushel; and if the Commissioner finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller at the rate of *ninety* cents for every proof-gallon of spirits that should have been produced from the grain or molasses so used in excess, which assessment shall be made whether the quantity of spirits reported is equal to or exceeds eighty per centum of the producing-capacity of the distillery. If the Commissioner finds that the distiller has not accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of *ninety* cents for every proof-gallon: *Provided*, That the actual product shall be assumed to be in no case less than eighty per centum of the producing-capacity of the distillery as estimated according to law. All assessments made under this section shall be a lien on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon, from the time such assessment is made until the same shall have been paid.

When a fruit distiller has received pomace, in the absence of any explanation otherwise accounting for it, it is justifiable to infer that the material was used in the production of spirits at the rate of 1 gallon to 14 gallons of pomace. (United States *v.* Cole, 134 Fed. Rep., 697; T. D. 786.)

It is well settled that a distiller is legally liable to a tax on his entire actual product, and on a quantity equal at least to 80 per centum of the producing capacity of his distillery as fixed by the survey, however small the actual product may be. (United States *v.* Singer, 15 Wall., 111; 17 Int. Rev. Rec., 9. Collector *v.* Beggs, 17 Wall., 182; 17 Int. Rev. Rec., 164. United States *v.* Ferrary et al., 93 U. S., 625; 22 Int. Rev. Rec., 394.)

Construction of the statute and method of computation. (Stoll *v.* Pepper, 97 U. S. (7 Otto), 438; 25 Int. Rev. Rec., 2. Weitzel *v.* Rabe, 103 U. S., 340. See also United States *v.* Nissley, 1 Dillon, 586; 13 Int. Rev. Rec., 174. Pahlman *v.* Collector, 20 Wall., 189; 19 Int. Rev. Rec., 171. Turner *v.* Williams, 18 Int. Rev. Rec., 6.)

The producing capacity of a distillery, and not the amount of spirits produced, is made the measure of taxation. (U. S. *v.* Halloran, 14 Blatch., 1; Fed. Cas. No. 15, 286.)

In a suit for taxes under section 3309 the original assessment list signed by the Commissioner is evidence of assessment, and the original report of survey and certificate of collector of delivery of triplicate copy to distiller are competent evidence. United States *v.* Bristow, 20 Fed. Rep., 378.)

If a distiller uses material for distillation in excess of the estimated capacity of his distillery according to the survey, but, in the regular course of his business, pays the tax upon his

Amendment
made by Sec. 12,
act Mar. 3, 1875
(18 Stat., 402).

See, 12, act Mar.
3, 1875 (18 Stat.,
402). A m e n d-
ment.

See, 12, act Mar.
3, 1875 (18 Stat.,
402). A m e n d-
ment.

entire production, he can not be again assessed the regular gallon tax on the spirits which the excess of material used should have produced. (*Runkle v. Citizens' Insurance Co. of Pittsburgh, Pa.*, 6 Fed. Rep., 143.)

The provision under this section that if the Commissioner of Internal Revenue, on making a monthly examination of a distiller's return, "finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller," etc., refers to the real average spirit-producing capacity of the distillery, and not to a fictitious capacity for any particular day or days. (*Chicago Distilling Co. v. Stone*, 140 U. S., 647; 37 Int. Rev. Rec., 206.)

See on this section *Stowell v. Williams, jr.*, 17 Int. Rev. Rec., 38; *Daly v. United States*, 16 Int. Rev. Rec., 147; *Hartman v. Bean*, 99 U. S., 393; 25 Int. Rev. Rec., 141.

The distiller is required to produce at least 80 per cent of the producing capacity of his distillery.

If he uses defective fruit or material from which he can not produce 80 per cent, he does so with full knowledge that he will be assessed on the basis of 80 per cent of his producing capacity. (*U. S. v. Ball*, 1908, 163 Fed. Rep., 504.)

Relief from assessments for deficiencies, etc., in amended by sec. 8, act of May 28, 1880 (21 Stat., 145).

[SEC. 3309a.] [Sec. 6, act of Mar. 1, 1879 (20 Stat., 327),
certain cases.] That whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose, on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises.

Accidental fire or other casualty. And the Commissioner of Internal Revenue upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, any without any fraud, collusion, or negligence of the distiller of any spirits in process of manufacture or distillation, or before removal to the distillery warehouse, shall not assess the distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law when the

deficiency is occasioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed.

Provided, That no tax shall be remitted or refunded under the provisions of this section upon any assessment made prior to January first, eighteen hundred and seventy-four:

Provided further, That no assessment shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report notify such distiller of such failure so to maintain the required capacity.

U. S. v. Ball (C. C. A.), 163 Fed. Rep., 504.

Assessment.—No distiller of fruit brandy to be reported for assessment on account of brandy produced and unaccounted for until determination of taxes due under section 3309, Revised Statutes, nor until due notice is given the distiller as required by regulations. (T. D., 1555.) October 27, 1909.

Statutory relief in cases of assessments under this section. (Regulations No. 7, Revised, 1908, pp. 87-92.)

[SEC. 3309b.] [Sec. 60, act of Aug. 28, 1894 (28 Stat., 509).] That all assessments made under the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, and Acts amendatory thereof, shall be at the rate of tax imposed by this Act on each proof gallon.

Rate of tax.

SEC. 3310 [as amended by act of Feb. 27, 1877 (19 Stat., 240), and sec. 7, act of May 28, 1880 (21 Stat., 145)]. The first fermenting period of every distiller shall be taken to begin on the day the distiller's bond is approved: and every distiller at the hour of twelve meridian on the last day of such fermenting period, or at the same hour on any previous day of such fermenting period on which spirits are distilled, shall be deemed to have commenced, and thereafter to be continuously engaged in, the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as hereinafter provided.

Fermenting pe-
riod.

Any distiller desiring to suspend work in his distillery may give notice in writing to the collector of the district, stating when he will suspend work; and on the day mentioned in said notice said collector or one of his deputies shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner of Internal Revenue may prescribe to prevent the lighting of any fire in such furnace or under such stills or boilers. The locks and seals, and other materials required for such purpose, shall be furnished to the collector by the Commissioner of Internal Revenue, to be duly accounted for by said collector. Such notice by any distiller, and the action taken by the collector in pursuance thereof, shall be immediately transmitted to the Commissioner of Internal Revenue. No distiller, after having given such notice, shall, after the time stated therein, carry on the business of a distiller.

Suspension of
work.

on said premises until he gives another notice in writing to said collector, stating the time when he will resume work; and at the time so stated for resuming work the collector or one of his deputies shall attend at the distillery to remove said locks and other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the collector of the district, and by him transmitted to the Commissioner of Internal Revenue.

Carrying on business after notice of suspension. Every distiller who, after the time fixed in said notice declaring his intention to suspend work, carries on the business of a distiller on said premises, or has mash, wort, or beer in his distillery, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having given the bonds required by law.

Penalties; see 3260. **Suspensions caused by unavoidable accidents.** But nothing in this section shall be held to apply to suspensions caused by *unavoidable accident*; and the Commissioner of Internal Revenue shall prescribe regulations to govern such cases of involuntary suspension.

Verbal amendment. Act Feb. 27, 1877. A distiller has one full fermenting period to prepare his mash or beer for distillation, and the liability to the 80 per cent capacity commences on the last day of such period, or on any previous day on which spirits are distilled. (Regulations No. 7, Revised, p. 56.)

When a nominal change shall occur at a distillery, by reason of a change in the name or style in which the operations at the distillery are conducted, it will not be required that the business of producing spirits shall be completely finished and operations suspended by the distiller desiring to change his name or style before the business shall be undertaken or begun by him under a different name or style; nor will he be required to give notice of suspension upon Form 124. (Regulations No. 7, p. 11.)

Reduction of capacity. SEC. 3311. Whenever any distiller desires to reduce the producing-capacity of his distillery, he shall give notice of such intention, in writing, to the collector, stating the quantity of spirits which he desires thereafter to manufacture or produce every twenty-four hours, and thereupon said collector shall proceed, at the expense of the distiller, to reduce and limit the producing-capacity of the distillery to the quantity stated in said notice, by placing upon a sufficient number of the fermenting-tubs close-fitting covers, which shall be securely fastened by nails, seals, and otherwise, and in such manner as to prevent the use of such tubs without removing said covers or breaking said seals, and shall adopt such other precautions as may be prescribed by the Commissioner of Internal Revenue to reduce the capacity of said distillery.

Tampering with Locks, etc.; penalty. And every person who breaks, injures, or in any manner tampers with any lock, seal, or other fastening applied to any furnace, still, or fermenting-tub, or other vessel, in pursuance of the provisions of law, or who opens or attempts to open any door, tub, or other vessel, which is

locked or sealed, or otherwise closed or fastened as herein provided, or who uses any furnace, still, or fermenting-tub, or other vessel, which is so locked, sealed, or fastened, shall be deemed guilty of a felony, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than one year nor more than three years. (Sec. 3268, R. S.)

Weitzel *v.* Rabe (103 U. S., 340).

SEC. 3312. All stamps required for distilled spirits shall be engraved in their several kinds in book-form, and shall be issued by the Commissioner of Internal Revenue to any collector, upon his requisition, in such numbers as may be necessary in the several districts. Each stamp shall have an engraved stub attached thereto, with a number thereon corresponding with an engraved number on the stamp, and the stub shall not be removed from the book. And there shall be entered on each stub such memoranda of the contents of its corresponding stamp as shall be necessary to preserve a perfect record of the use of such stamp when detached.

Traffic in and possession of internal-revenue stamps. (11 Int. Rev. Rec., 57.)

Counterfeiting stamps. (Sec. 5414, Appendix, p. 420.)

SEC. 3313. On every stamp for the payment of tax on distilled spirits there shall be engraved words and figures representing a decimal number of gallons, and on the stub corresponding to such stamp there shall be engraved a similar number of gallons, and between the stamp and the stub, and connecting them, shall be engraved nine coupons, which, beginning next to the stamp, shall indicate in succession the several numbers of gallons between the number named in the stamp and the decimal number next above. And whenever any collector receives the tax on the distilled spirits contained in any cask, he shall detach from the book a stamp representing the denoteate quantity nearest to the quantity of proof-spirits in such cask, as shown by the gauger's return, with such number of the coupons attached thereto as shall be necessary to make up the whole number of proof-gallons in said cask; * * * All unused coupons shall remain attached to the marginal stub, and no coupon shall have any value or significance when detached from the stamp and stub. And the tax-paid stamps with the coupons may denote such number of gallons, not less than twenty [*ten*], as the Commissioner of Internal Revenue may deem advisable.

Part indicated by * * * obsolete. Section 48, act of August 28, 1894. See section 3251.

Fractional gallons. (See sec. [3251a], p. 151.)

The act of May 28, 1880, amending section 3287, page 178, provided for original packages of a distiller of not less than 10 wine gallons' capacity, thus modifying the last clause of the above section without specifically amending it.

The tax-paid stamps issued by collectors for the payment of taxes on spirits are nothing more than receipts, and are worth-

less as receipts to other parties than those to whom they are issued. (A. & S. Woolner *v.* United States, 13 Ct. Cls. 355; 24 Int. Rev. Rec., 181.)

Tax-paid spirit stamps containing coupons for the fractional parts of a gallon. (Circular Letter of Dec. 21, 1894; 40 Int. Rev. Rec., 405.)

Accountability
for stamp-books.

SEC. 3314 [amended by act of Mar. 1, 1879 (20 Stat., 327), and by sec. 16, act of May 28, 1880 (21 Stat., 145).] The books of tax-paid stamps issued to any collector shall be charged to his account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books; and every collector shall make a monthly return to the Commissioner of Internal Revenue of all tax-paid stamps issued by him to be affixed to any cask or package containing distilled spirits on which the tax has been paid, and account for the amount of the tax collected; and when the said collector returns to the Commissioner of Internal Revenue any book of marginal stubs, which it shall be his duty to do as soon as all the stamps contained in the book when issued to him have been used, and accounts for the tax on the number of gallons represented on the stamps and coupons that were contained in said book, there shall be allowed to the collector a commission of one-half of one per centum on the amount of such tax, in addition to any other commission by law allowed: *Provided*, That the total net compensation of collectors as fixed by this title shall not be thereby increased. All stamps relating to distilled spirits, other than the tax-paid stamps, shall be charged to collectors; and the books containing such stamps may be intrusted by any collector to the gauger of the district, who shall make a daily report to the collector of all such stamps used by him and for whom used; and when all the stamps contained in any such book have been issued, the gauger of the district shall return the book to the collector, with all the marginal stubs therein: *Provided*, That all export stamps issued to collectors shall be charged to them as representing the value of ten cents for each stamp, and they shall collect the amount due for such stamps at the rate of ten cents for each stamp issued in such manner and at such time as the Commissioner of Internal Revenue may prescribe, and the Commissioner may, in his discretion, make assessment therefor.

The stamps having a money value are as follows, viz: Tax-paid, \$1.10 per gallon; case stamps for spirits bottled in bond, 10 cents each, and exportation stamps for spirits in original casks, 10 cents each, and for spirits in wooden packages, each containing two or more metallic cans, each having a capacity of not less than 5 gallons wine measure, 5 cents each. (Regulations No. 7, revised, p. 113, sec. 3330, p. 220; act Mar. 3, 1897, p. 234; act Feb. 21, 1899, p. 178.)

In *United States v. Landram* (118 U. S., 81; 32 Int. Rev. Rec. 151) it was held that the right of collectors to commissions on taxes collected by the sale of tax-paid spirit stamps was not taken from them by section 2, act of March 1, 1879 (sec. 3148, amended, p. 63).

Circular No. 306. Collectors' commissions on sale of tax-paid spirit stamps (32 Int. Rev. Rec., 325).

SEC. 3315 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327).] The Commissioner of Internal Revenue may, under regulations prescribed by him with the approval of the Secretary of the Treasury, issue stamps for restamping packages of distilled spirits, tobacco, cigars, snuff, cigarettes, and fermented liquors which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident.

Redemption of stamps (p. 331).

Restamping packages of spirits, tobacco, cigars, snuff, cigarettes, fermented liquors, and denatured alcohol. (Cir. No. 705, Sept. 6, 1907; T. D. 1226.)

Packages of fermented liquors may be restamped under direction of the collector. T. D. 1672.

Amending regulations No. 7, concerning restamping of packages of spirits from which stamps have been lost or destroyed by unavoidable accident. (T. D., 1532, Aug. 13, 1909.)

SEC. 3316. Whenever any revenue officer affixes or cancels, or causes or permits to be affixed or canceled, any stamp relating to distilled spirits provided for by law, in any other manner or in any other place, or issues the same to any other person than as provided by law, or by regulation made in pursuance thereof, or knowingly affixes, or permits to be affixed, any such stamp to any cask or package of spirits of which the whole or any part has been distilled, rectified, compounded, removed, or sold, in violation of law, or which has in any manner escaped payment of tax due thereon, he shall, for every such offense, be fined not less than five hundred dollars nor more than three thousand dollars, and be imprisoned for not less than six months nor more than three years.

[SEC. 3316a.] [Sec. 17, act Feb. 8, 1875 (18 Stat., 307).] That if any person shall affix, or cause to be affixed, to or upon any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal-revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits, he shall, for each offense, be liable to a penalty of one hundred dollars, and, on conviction, shall be fined not more than one thousand dollars, and imprisoned not more than three years, and the cask or package with its contents shall be forfeited to the United States.

The statute prohibits the use of any device in the similitude of, or having the general appearance of, a stamp required by the internal-revenue laws for distilled spirits. The Commissioner of Internal Revenue has not adopted a standard as to what devices of this kind are allowable and what are prohibited. (T. D. 507.)

Wholesale liquor dealers and rectifiers who place such stamps on packages containing distilled spirits must do so at their own risk if they are in any wise in the similitude of stamps required for spirits. (T. D. 559.)

Restamping
tax-paid spirits,
tobacco, cigars,
snuff, cigarettes,
and fermented
liquors.

Officer using, or
issuing, or per-
mitting use of
stamps contrary
to law.

Penalty.

Affixing imi-
tation stamp on
packages of dis-
tilled spirits.

Penalty.

Rectifiers' returns.

SEC. 3317 [as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327).] That on or before the tenth day of each month every person engaged in rectifying or compounding distilled spirits shall make, in such form as may be prescribed by the Commissioner of Internal Revenue, a return to the collector of the district, showing the quantity of spirits received for rectification, and from whom received, the quantity dumped for rectification, the quantity rectified, the quantity removed after rectification during the preceding month, and giving such other information as may be required by the Commissioner of Internal Revenue, such return to be made in duplicate and sworn to by the rectifier; and the collector shall forward one of such returns to the Commissioner of Internal Revenue.

Rectifiers intending to defraud.

Every person who engages in, or carries on, the business of a rectifier with intent to defraud the United States of the tax on the spirits rectified by him, or any part thereof, or with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits, or who shall purchase or receive or rectify any distilled spirits which have been removed from a distillery to a place other than the distillery-warehouse provided by law, knowing or having reasonable grounds to believe that the tax on said spirits, required by law, has not been paid, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

As to employee swearing to returns. (32 Int. Rev. Rec., 165, T. D. 1046.)

Carrying on business as rectifiers, with intent to defraud. (Sprinkle v. U. S., 141 Fed. Rep., 811; Angle v. U. S., 162 ibid., 264; U. S. v. Byrne, 7 Fed. Rep., 963.)

Rectifiers' notice of intention to rectify.

[**SEC. 3317a.**] [Amended by act of July 16, 1892 (27 Stat., 200).] When any rectifier intends to rectify or compound any distilled spirits he shall, before emptying any package of distilled spirits for that purpose, give notice in duplicate to the collector of internal revenue for the district of his intention so to rectify, and submit such package for the inspection of a United States gauger, who shall duly weigh or gauge such package and its contents and make due return thereof, and such spirits shall not be emptied for rectification, nor rectified or compounded in the package, until gauged or weighed as herein above provided. And such notice and return shall be made in such form and contain such particulars as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe.

Penalty. (See sec. 3323, R. S., amended.)

Regulations concerning marking, reporting, and accounting for sweetened spirits at rectifying houses. (Regulations, No. 7, pp. 100, 105, 109, 111.)

Addition of caramel or burnt sugar. (T. D. 1306.)

Gauging.

SEC. 3318 [as amended]. Every rectifier and wholesale liquor-dealer shall provide a book, to be prepared and kept in such form as may be prescribed by the Commissioner of Internal Revenue, and shall, on the same day on which he receives any foreign or domestic spirits, and before he draws off any part thereof, or adds water or anything thereto, or in any respect alters the same, enter in such book, and in the proper columns respectively prepared for the purpose, the date when, the name of the person or firm from whom, and the place whence the spirits were received, by whom distilled, rectified, or compounded, and when and by whom inspected, and, if in the original package, the serial number of each package, the number of wine-gallons and proof-gallons, the kind of spirit, and the number and kind of adhesive stamps thereon. And every such rectifier and wholesale dealer shall, at the time of sending out of his stock or possession any spirits, and before the same are removed from his premises, enter in like manner in said book the day when and the name and place of business of the person or firm to whom such spirits are to be sent, the quantity and kind or quality¹ of such spirits, the number of gallons and fractions of a gallon at proof, and, if in the original packages in which they were received, the name of the distiller and the serial number of the package. Every such book shall be at all times kept in some public or open place on the premises of such rectifier or wholesale dealer for inspection, and any revenue officer may examine it and take an abstract therefrom; and when it has been filled up as aforesaid, it shall be preserved by such rectifier or wholesale liquor-dealer for a period not less than two years; and during such time it shall be produced by him to every revenue officer demanding it.

And whenever any rectifier or wholesale liquor-dealer refuses or neglects to provide such book, or to make entries therein as aforesaid, or cancels, alters, obliterates, or destroys any part of such book, or any entry *therein*, or makes any false entry therein, or hinders or obstructs any revenue officer from examining such book, or making any entry therein, or taking any abstract therefrom; or whenever such book is not preserved or is not produced by any rectifier or wholesale liquor-dealer as hereinbefore directed, he shall pay a penalty of one hundred dollars, and shall on conviction be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

That every person required to keep the books prescribed by this section shall, on or before the tenth day of each month, make a full and complete transcript of all entries made in such book during the month preceding, and, after verifying the same by oath, shall forward the same to the collector of the

Books to be
kept by rectifiers
and wholesale
dealers.

Penalties.

Act Feb. 27,
1877.

Act Feb. 27,
1877.

Sec. 5, act Mar.
1, 1879. (20 Stat.,
327.)

Transcripts.

¹ This word "quality" is erroneously printed "quantity" in the Revised Statutes, "edition of 1878."

Penalty.

district in which he resides. Any failure by reason of refusal or neglect to make said transcripts shall subject the person so offending to a fine of one hundred dollars for each neglect or refusal.

Law construed and applied. Where parties are both wholesale and retail dealers in the same place. (*United States v. Malone*, 8 Ben., 574; 22 Int. Rev. Rec., 403.)

Importers must keep the wholesale liquor dealers' book. (*United States v. McCullough*, 22 Int. Rev. Rec., 202.)

Recovery of penalty of \$100 in a civil action no bar to criminal proceedings. (*Case of Leszynsky*, 25 Int. Rev. Rec., 71; 16 Blatch., 9.)

The duty of making entries in the book may be delegated to a clerk, but the dealers and rectifiers are responsible if the proper entries are not made. (*United States v. 50 Barrels Whisky*, 11 Int. Rev. Rec., 94; *U. S. v. Amann*, Fed. Cas. No. 14438.)

Oath should be made by the principal instead of employee. (32 Int. Rev. Rec., 165.)

Verification of returns. (T. D. Nos. 1039, 1046, 1212, 1646.)

Forms 52 A and 122. (T. D., 1626.)

Revision of Form 45. (T. D. 353, June 3, 1901.)

A wholesale liquor dealer who deals exclusively in wines or malt liquors not required to keep the book. (13 Int. Rev. Rec., 161.)

In an indictment under this section it is not necessary to specify the name of the person to whom, or the place where, the casks were sent. That is a matter of evidence. (*Williams v. U. S.*, 158 Fed. Rep., 30.)

Indictment under section 3318. (*U. S. v. Miller*, 14 Blatch., 93; Fed. Cas. No. 15771.)

The statute refers only to wholesale dealers in spirits. A wholesale dealer in malt liquors is not required to keep the book. (*U. S. v. Reagan*, Fed. Cas. No. 16128; 15 Int. Rev. Rec., 8.)

Transcripts must be filed. (*Brown v. Harkins*, 131 Fed. Rep., 63.)

Cases of whisky bottled in bond should be entered on book Form 52. (T. D. 808; Regs. No. 23, revised, p. 23.)

It is not necessary for a person qualifying as rectifier, for the sole purpose of rectifying for other persons, to qualify as wholesale liquor dealer. How book Form 52 should be kept. (T. D. 640.)

[**SEC. 3318a.**] [*Sec. 62, act of Aug. 28, 1894 (28 Stat., 509.)*] That no distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale liquor dealer on account of such sales:

Provided, That he shall be required to keep the book prescribed by section thirty-three hundred and eighteen of the Revised Statutes of the United States, or so much as shall show the date when he sent out any spirits, the serial numbers of the packages containing same, the kind and quality of the spirits in wine gallons and taxable gallons, the serial numbers of the stamps on the packages, and the name and residence of the person to whom sent; and the provisions of section five of an Act entitled "An Act to amend the laws relating to internal revenue" approved March fifth, eighteen hundred and seventy-nine, as to transcripts, shall apply to such books. Any failure,

Distiller re-
quired to keep
book. Sec. 3318.
R. S.

by reason of refusal or willful neglect, to furnish the transcript by him shall subject the spirits owned or distilled by him to forfeiture.

SEC. 3319. It shall not be lawful for any rectifier of distilled spirits, or wholesale or retail liquor-dealer, to purchase or receive any distilled spirits in quantities greater than twenty gallons from any person other than an authorized rectifier of distilled spirits, distiller, or wholesale liquor-dealer. Every person who violates this section shall forfeit and pay one thousand dollars: *Provided*, That this provision shall not be held to apply to judicial sales, or to sales at public auction made by an auctioneer.

The exception made in this proviso is extended to certain other sales by section 4, act of March 1, 1879, amending section 3244, paragraph 5, page 139.

If a rectifier purchases from an authorized distiller, who is not an authorized rectifier or an authorized wholesale liquor dealer, distilled spirits, in quantities greater than 20 gallons, which were not produced by such authorized distiller, such purchaser is liable to the penalty imposed by section 3319. (*The New York Rectifying Co. v. United States*, 14 Blatch., 549.)

Held, That the word "receive" as used in this section means receive for sale, and that where a retail dealer receives more than 20 gallons of spirits from any person other than one authorized by the act to sell such spirits, for storage only, and not for sale, he does not incur the penalty. (*United States v. Fridenberg*, 11 Int. Rev. Rec., 5.)

SEC. 3320 [as amended by act of July 16, 1892 (27 Stat., 183), and as further amended by sec. 66, act of Aug. 28, 1894 (28 Stat., 509).] Whenever any cask or package, containing five wine gallons or more, is filled for shipment, sale, or delivery on the premises of any rectifier who has paid the special tax required by law, it shall be inspected and gauged by a United States gauger whose duty it shall be to mark and brand the same and place thereon an engraved stamp, which shall state the date when affixed and the number of proof gallons, and shall be in such form as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury: *Provided*, That when such cask or package is filled on the premises of a rectifier rectifying less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, it may be gauged, marked, branded, and stamped by a United States gauger, or it may be gauged, marked, branded, and stamped by the rectifier, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

The act of July 20, 1868, imposed a tax of 25 cents each on stamps for rectified spirits and wholesale liquor dealers' packages.

This rate was in force until August 1, 1872. (Act of June 6, 1872.)

The act of June 6, 1872, reduced the price of these stamps to 10 cents, which continued until the taking effect of the act of May 28, 1880, since which time no charge has been made for rectifiers' or wholesale liquor dealers' stamps. (Commissioner's reports, 1905, p. 5; 1910, p. 18.)

Rectified spirits stamps must be signed by gaugers on the date they affixed them. (40 Int. Rev. Rec., 413.)

Purchase of quantities greater than 20 gallons from one person, etc.

Penalty.

Gauging and stamping of rectified spirits.

Regulations concerning the gauging and marking of distilled spirits at rectifying houses. (Regulations, No. 7, pp. 179-183. Circulars 737, 738, 740.)

Violations of law and regulations by wholesale liquor dealers and rectifiers. (Cir. No. 616; T. D. 455.)

Marks on packages put up by wholesale liquor dealers. (Cir. No. 652, T. D. 734.)

Brands in spiral form are no longer to be used on rectifiers' packages of spirits. (T. D. 721, Nov. 24, 1903.)

Obscure marking and branding. (T. D. 566.)

SEC. 3321 [relative to gauging and stamping spirits on premises of wholesale dealer, repealed by legislative, executive, and judicial appropriation act of Aug. 15, 1876 (19 Stat., 152).]

Filling blanks.
Affixing and var-
nishing stamps.

SEC. 3322. All blanks in any of the forms prescribed in the preceding sections shall be duly filled in accordance with the facts in each case. And the stamps therein designated shall in every case be affixed to a smooth surface of the cask or other package, which surface shall not have been previously painted or covered with any substance, and so as to fasten the same securely to the cask or package, and shall be duly canceled, and shall then be immediately covered with a coating of transparent varnish, or other substance, so as to protect them from removal or damage by exposure; and such affixing, cancellation, and covering shall be done in such manner as the Commissioner of Internal Revenue may by regulation prescribe.

Wholesale
liquor dealers to
mark, brand, and
stamp packages.

SEC. 3323 [*as amended by the act of July 16, 1892 (27 Stat., 200)*]. Every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale liquor dealer, who has paid the special tax required by law, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the Commissioner of Internal Revenue, *with the approval of the Secretary of the Treasury*, may prescribe; and on or before the tenth day of each month every wholesale liquor dealer shall make return, under oath, to the collector of internal revenue for the district of the various kinds and quantities of each kind and of the total quantities of distilled spirits received on his premises and of the various kinds and quantities of each kind and of the total quantity of distilled spirits sent out from his stock or possession during the preceding month, and of the quantity of each kind and the total quantity remaining on hand at the end of the month; and such return shall be made in such form and contain such other particulars as the Commissioner of Internal Revenue, *with the approval of the Secretary of the Treasury*, may prescribe. *And every rectifier or wholesale liquor dealer who refuses or willfully neglects to comply with the requirements of this act as to giving the said notice or the said return, and as to marking, branding, and stamping, in accordance with the law and the regulations made in pursuance thereof, the packages of spirits filled on his prem-*

Returns.

Form.

Penalty.

ises as aforesaid, shall, for each such offense, be fined not less than two hundred dollars nor more than one thousand dollars.

Spurious labels. (T. D. 286.)

Reduction in proof of distilled spirits in distillers' original packages. (Regulations No. 7, rev., p. 190.)

Section 3289, Revised Statutes, provides forfeiture if spirits are not marked and branded as required. (U. S. v. 7 Bbls. of Whiskey, 131 Fed. Rep., 806.)

SEC. 3324. Every person who empties or draws off, or causes to be emptied or drawn off, any distilled spirits from a cask or package bearing any mark, brand, or stamp, required by law, shall, at the time of emptying such cask or package, efface and obliterate said mark stamp, or brand. Every such cask or package from which said mark, brand, or stamp is not effaced and obliterated as herein required, shall be forfeited to the United States, and may be seized by any officer of internal revenue wherever found. And every railroad company or other transportation company, or person who receives or transports, or has in possession with intent to transport, or with intent to cause or procure to be transported, any such empty cask or package, or any part thereof, having thereon any brand, mark, or stamp, required by law to be placed on any cask or package containing distilled spirits, shall forfeit three hundred dollars for each such cask or package, or any part thereof, so received or transported, or had in possession with the intent aforesaid; and every boat, railroad-car, cart, dray, wagon, or other vehicle, and all horses and other animals used in carrying or transporting the same shall be forfeited to the United States. Every person who fails to efface and obliterate said mark, stamp, or brand, at the time of emptying such cask or package, or who receives any such cask or package, or any part thereof, with the intent aforesaid, or who transports the same, or knowingly aids or assists therein, or who removes any stamp provided by law from any cask or package containing, or which had contained, distilled spirits, without defacing and destroying the same at the time of such removal, or who aids or assists therein, or who has in his possession any such stamp so removed as aforesaid, or has in his possession any canceled stamp, or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits, shall be deemed guilty of a felony, and shall be fined not less than five hundred dollars nor more than ten thousand dollars, and imprisoned not less than one year nor more than five years.

As to empty imported spirit packages, see act of March 1, 1879, as amended, page 227.

It is of no consequence under this section what the intent of the person failing to obliterate stamp is. There is no discretion given to the court whether to fine or imprison for the offense.

Stamps and
brands to be ef-
faced from empty
casks.

Penalties for
omitting to efface
and for transpor-
tation in viola-
tion of law.

The offender must be fined and also imprisoned. (*United States v. Quantity of Distilled Spirits*, 3 Ben., 552; 11 Int. Rev. Rec., 3.)

Principal liable for failure of employee to obliterate stamps. (*United States v. Adler & Furst*, 21 Int. Rev. Rec., 316.)

The emptying of a cask without destroying stamp by the wife of a retail liquor dealer, who acts for her husband, renders the latter liable to the penalty.

It is well settled that where a master, owing a certain duty to the public, intrusts its performance to a servant, he is responsible criminally for failure of servant to discharge the duty, if nonperformance of the duty is a crime. (*United States v. Buchanan* (1881), 4 Hughes, 487; 9 Fed. Rep., 689.)

Indictment for removing stamps from casks containing distilled spirits. (*United States v. Bayaud et al.*, 16 Fed. Rep., 376; 21 Blatch., 287.)

Verdict set aside. (*U. S. v. Rogers*, western district of Kentucky (1908), 164 Fed. Rep., 520.)

An indictment for failing to efface and cancel marks and brands at the time of emptying the package, need not aver a criminal intent. (*U. S. v. Ulrici*, 3 Dill, 533; Fed. Cas. No. 16594; *U. S. v. Gallant*, 177 Fed. Rep., 281.)

The carrier is bound to know whether or not there were stamps upon the barrels not effaced or obliterated. (*U. S. v. Goodrich Transp. Co.*, Fed. Cas. 15228; 8 Biss, 224.)

Section 3324 does not apply to stamps on cases which had contained spirits bottled-in-bond. (T. D. 1252.)

Circular letter to revenue officers relative to the requirements of this section. (T. D. 1648.)

Definition of felony. (Sec. 335, Criminal Code, act of Mar. 4, 1909, p. 388.)

Buying or selling spirit casks having inspection marks.

SEC. 3325. Whenever any person knowingly purchases or sells, with inspection-marks thereon, any cask or package, after the same has been used for distilled spirits, he shall forfeit and pay the sum of two hundred dollars for every such cask so purchased or sold.

Changing or altering marks or brands. Shifting spirits, etc.

SEC. 3326. Whenever any person changes or alters any stamp, mark, or brand on any cask or package containing distilled spirits, or puts into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently uses any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein, he shall forfeit and pay the sum of two hundred dollars for every cask or package on which the stamp or mark is so changed or altered, or which is so fraudulently used, and shall be fined for each such offense not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than one month nor more than one year.

United States v. Bardenheier (49 Fed. Rep., 846.)

Removal of spirits from distillery or rectifier's premises before sunrise and after sunset.

SEC. 3327. No person shall remove any distilled spirits at any other time than after sun-rising and before sun-setting in any cask or package containing more than ten gallons from any premises or building in which the same may have been distilled, redistilled, rectified, compounded, manufactured, or stored; and every person who violates this provision shall be liable to a penalty of one hundred dollars for each cask, barrel, or package of

Penalty.

spirits so removed; and said spirits, together with any vessel containing the same, and any horse, cart, boat, or other conveyance used in the removal thereof, shall be forfeited to the United States.

Forfeiture.

SEC. 3328. On all wines, liquors, or compounds known or denominated as wine, and made in imitation of sparkling wine or champagne, but not made from grapes grown in the United States, and on all liquors, not made from grapes, currants, rhubarb, or berries grown in the United States, but produced by being rectified or mixed with distilled spirits or by the infusion of any matter in spirits, to be sold as wine, or as a substitute for wine, there shall be levied and collected a tax of ten cents per bottle or package containing not more than one pint, or of twenty cents per bottle or package containing more than one pint and not more than one quart, and at the same rate for any larger quantity of such merchandise, however the same may be put up, or whatever may be the package. The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps denoting the tax herein imposed, to be affixed to each bottle or package containing such merchandise, by the person manufacturing, compounding, or putting up the same, before removal from the place of manufacture, compounding, or putting up; and said stamps shall be affixed and canceled in such manner as the Commissioner may prescribe; and the absence of such stamp from any bottle or package containing such merchandise shall be prima facie evidence that the tax thereon has not been paid, and such merchandise shall be forfeited to the United States.

Tax on imita-tions of wines; how paid.

Any person counterfeiting, altering, or reusing said stamps shall be subject to the same penalties as are imposed for the same offenses in relation to proprietary stamps.

Counterfeiting, altering, or re-using stamps. Penalties.

See section 3429, Revised Statutes, for penalties for counterfeiting, etc., and section 8, act of June 13, 1898 (30 Stat., 448).

Held, that the article was none the less free from tax, as being "made from grapes grown in the United States," notwithstanding the carbonic acid gas was injected by a separate process of manufacture. (*United States v. Wines of Blum.*, 6 Ben., 493; 17 Int. Rev. Rec., 181.)

SEC. 3329 [as amended by sec. 10, act of May 28, 1880 (21 Stat., 145)]. Distilled spirits upon which all taxes have been paid may be exported, with the privilege of drawback, * * * and in distillers' original casks (*or*) packages, containing not less than twenty wine-gallons each, on application of the owner thereof to the collector of customs at any port of entry, and under such rules and regulations, and after making such entry as may be prescribed by law and by the Secretary of the Treasury. The entry for such exportation shall be in triplicate, and shall contain the name of the person applying to export, the name of the distiller, the name of the district in which the spirits were distilled, the name of the vessel by

Drawback on distilled spirits.

Exportation of distilled spirits upon which tax has been paid.

which, and the name of the port to which, they are to be exported; and the form of the entry shall be as follows:

Export entry of distilled spirits entitled to drawback.

Entry of spirits distilled by _____, in _____ district, State of _____, to be exported by _____, in the _____, whereof _____ is master, bound to _____.

And the entry shall specify the whole number of casks or packages, the marks and serial numbers thereon, the quality or kind of spirits as known in commerce, the number of gauge or wine gallons and of proof-gallons; and the amount of the tax on such spirits shall be verified by the oath of the owner of the spirits, and that the tax has been paid thereon, and that they are truly intended to be exported to the port of _____, and not to be relanded within the limits of the United States. One bill of lading, duly signed by the master of the vessel, shall be deposited with said collector, to be filed at his office with the entry retained by him. One of said entries shall be, when the shipment is completed, transmitted to the Secretary of the Treasury, to be recorded and filed in his office. The lading on board said vessel shall be only after the receipt of an order or permit signed by the collector of customs and directed to a customs gauger, and after each cask or package shall have been distinctly marked or branded by said gauger as follows: "For export from U. S. A." and the tax-paid stamps thereon obliterated. The casks or packages shall be inspected and gauged alongside of or on the vessel by the gauger designated by said collector, under such rules and regulations as the Secretary of the Treasury may prescribe; and on application of the said collector it shall be the duty of the surveyor of the port to designate and direct one of the custom-house inspectors to superintend such shipment. And the gauger aforesaid shall make a full return of such inspection and gauging in such form as may be prescribed by the Secretary of the Treasury, showing by whom each cask of such spirits was distilled, the serial number of the cask, and of the tax-paid stamp attached thereto, the proof and quantity of such spirits as per the original gauge-mark on each cask, and the quantity in proof and wine gallons as per the gauge then made by him. And said gauger shall certify on such return that the shipment has been made, in his presence, on board the vessel named in the entry for export, which return shall be indorsed by said custom-house inspector certifying that the casks or packages have been shipped under his supervision on board said vessel, and the tax-paid stamps obliterated; and the said inspector shall make a similar certificate to the surveyor of the port, indorsed on or to be attached to the entry in possession of the custom-house.

Drawback.

A drawback shall be allowed upon distilled spirits on which the tax has been paid and exported to foreign countries, under the provisions of this act, when exported as herein provided for. The drawback allowed shall include the taxes levied and paid upon the distilled spirits exported, at the rate of *ninety* cents per proof-gallon, as per last gauge of said spirits prior to exportation, and shall be due and payable only after the proper entries have been made and filed, and all other conditions complied with as hereinbefore required, and on filing with the Secretary of the Treasury the proper claim, accompanied by the certificate of the collector of customs at the port of entry where the spirits are entered for export, that such spirits have been received into his custody and the tax-paid stamps thereon obliterated; and the Secretary of the Treasury shall prescribe such rules and regulations in relation thereto as may be necessary to secure the Treasury of the United States against frauds: *Provided*, That the drawback on spirits distilled prior to August one, eighteen hundred and seventy-two, shall not exceed sixty cents per proof-gallon.

For penalty imposed for fraudulently claiming drawback see section 3330, Revised Statutes.

One of the changes in section 3329 made by section 10, act of May 28, 1880, was in these words: "That section thirty-three hundred and twenty-nine of the Revised Statutes of the United States be amended by striking out after the word 'exported,' in the fifty-sixth line, the words 'at the rate of seventy cents per proof-gallon,' and inserting in lieu thereof the word 'ninety.'" It was intended by this amendment, as construed by this office, simply to strike out "seventy" and insert "ninety," and is printed as intended.

In the absence of any provision of law for the allowance of drawback of tax at the rate imposed by section 48, act of August 28, 1894, no greater allowance than here authorized can be made. The allowance of drawback is limited to 90 cents per gallon, owing to the failure of Congress to amend this section when the rate of tax was increased to \$1.10 per gallon.

Drawback to be computed on *proof*-gallons in all cases, notwithstanding the fact that tax is levied and paid on the wine-gallon when below proof. (Decision of Secretary of the Treasury May 19, 1884, case of Lilienthal & Co., 30 Int. Rev. Rec., 157.)

Removal of spirits from distiller's original casks or packages to other packages prior to exportation, even if under supervision of customs officers, vitiates claim for drawback. (Decision of Secretary of the Treasury June 14, 1883, case of Hayes & Popple. See also like decision (Treasury Dept., No. 5859, Aug. 1883) as to exported spirits returned to United States to be recasked for re-exportation; 29 Int. Rev. Rec., 308.)

As the statute provides only for the exportation of spirits by vessel (see sec. 3, R. S.) no allowance of drawback can be made on spirits exported by cars or other vehicles used as a means of transportation on land. (Decision of Secretary of the Treasury Apr. 18, 1885, case of Lilienthal & Co.)

Date of exportation to be determined by date of sailing of exporting vessel. (Thompson et al., *v.* Peaslee, 20 How., 57.)

Drawback on medicinal and toilet preparations manufactured from tax-paid alcohol, page 337.

Regulation in regard to drawback of tax on distilled spirits. (Regulations No. 29 Revised.)

Exportation of distilled spirits withdrawn from bonded warehouses.

SEC. 3330 [as amended by sec. 2, act of June 9, 1874 (18 Stat., 64); and sec. 11, act of May 28, 1880 (21 Stat., 145)]. Distilled spirits may be withdrawn from distillery bonded warehouses, at the instance of the owner of the spirits for exportation in the original casks, or packages, without the payment of tax, under such regulations, and after making such entries and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury: *Provided*, That bonds given under this section shall be canceled under such regulations as the Secretary of the Treasury shall prescribe: *And provided further*, That the bonds required to be given for the exportation of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading, or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof.

All distilled spirits intended for export, as aforesaid, before being removed from the distillery warehouse, shall be marked as the Commissioner of Internal Revenue may prescribe, and shall have affixed to each cask an engraved stamp indicative of such intention, to be provided and furnished by the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner, and for the expense attending the providing and affixing such stamps ten cents for each package so stamped shall be paid to the collector on making the entry for such transportation. When the owner of the spirits shall have made the proper entries, filed the bonds, and otherwise complied with all the requirements of the law and regulations as herein provided, the collector shall issue to him a permit for the removal and transportation of said spirits to the collector of the port from which the same are to be exported, accurately describing the spirits to be shipped, the amount of tax thereon, the State and district from which the same is to be shipped, the name of the distiller by whom distilled, the port to which the same are to be transported, the name of the collector of the port to whom the spirits are to be consigned, and the routes over which they are to be sent to the port of shipment. Such shipment shall be made over bonded routes whenever practicable. The collector of the port shall receive such spirits, and permit the exportation thereof, under the same rules and regulations as are prescribed for the exportation of spirits upon which the tax has been paid.

Export stamp.
10 cents instead
of 25. (Sec. 2, act
June 9, 1874.)

Fraudulent claims for drawback.

And every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback

than the tax actually paid thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than ten years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not exceeding five thousand dollars and imprisoned not more than one year, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States, whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

Penalty.

Every person who intentionally relands within the jurisdiction of the United States any distilled spirits which have been shipped for exportation under the provisions of this act, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not exceeding five thousand dollars and imprisoned not more than three years; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all boats, vehicles, horses, or other animals used in relanding and removing such distilled spirits, shall be forfeited to the United States.

Relanding spirits shipped for exportation.

Penalty.

See notes under section 3329.

Fraudulent claims for drawback. (Sec. 3443, p. 353.)

The amendment by the act of June 9, 1874, reduced the expense of export stamp from 25 to 10 cents.

Instructions relative to removal of spirits and giving bonds within 30 days from date of regauge for exportation. (T. D. 21472, 1899.)

Regulations No. 29. Concerning the transportation and exportation of distilled spirits in bond without payment of tax.

See on this section *Clay v. Swope* (1889), (35 Int. Rev. Rec., 136).

As to wooden packages containing metallic cans, see section 3287, as amended.

Exportation and reimportation of distilled spirits. (T. D. 1458) (incorporated in Regulation No. 29 revised), Cir. No. 5, Int. Rev. No. 733, Feb. 4, 1909.)

Transfer of distilled spirits to bonded manufacturing warehouse, page 336.

The execution of the export bond frees the spirits for the time being from obligation to pay the tax, and from the operation of the warehousing bond. (18 Op. Atty. Gen., 92.)

SEC. [3330a.] [Sec. 1, act of June 9, 1874 (18 Stat., 64), as amended by sec. 10, act of Mar. 1, 1879 (20 Stat., 327).] On withdrawal of spirits for exportation transportation bond may be taken.
That whenever the owner or owners of distilled spirits shall desire to withdraw the same from any distillery bonded warehouse for exportation under existing law, such owner or owners may at their option, in lieu of executing an export bond as now provided by law, give a transportation bond with sureties satisfactory to the col-

lector of internal revenue, and under such rules and regulations as the Secretary of the Treasury may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein, *and for the due performance on the part of the exporter or owner at the port of export of all the requirements in regard to notice of export, entry, and the giving of bond hereinafter specified;* and in such case, on arrival of the spirits at the port of export,

Notice to collector of port. the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth

his intention to export the same, and the name of the vessel upon which the same are to be laden, and the port to which they are intended to be exported. He shall, after the quantity of spirits has been determined by the gauger and inspector, file with the collector of the port an

Export entry.

Export bond.

export-entry verified by his oath or affirmation. He

shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the spirits as specified in said entry to the port designated in said entry, or to some other port without the jurisdiction of the United States.

And upon the lading of such spirits, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said spirits

Clearance certificate and gauger's report.

were withdrawn for exportation, a clearance certificate and a detailed report of the gauger, which report shall show the capacity of each cask in wine-gallons, and the contents thereof in wine-gallons, proof-gallons, and taxable gallons. Upon receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation

Cancellation of transportation bond.

Cancellation of export bond.

bond. The bond required to be given for the landing at a foreign port of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said

distilled spirits have been landed at the port of destination named in the bill of lading or any other port without the jurisdiction of the United States or upon satisfactory proof that after shipment the same were lost at sea with-

Change of package.

out fault or neglect of the owner or shipper thereof; *and whenever a distiller of spirits in bond shall desire to change the packages in which the same is contained, in order to export them, the Commissioner of Internal Revenue shall be authorized, under regulations to be prescribed by him, and upon the execution of proper bonds with sufficient sureties, to permit the withdrawal of so much spirits from bond and in new packages as the distiller shall desire to export as aforesaid.*

The withdrawal of spirits from a bonded warehouse for consumption on a foreign war vessel is not an exportation. (23 Op. Atty. Gen., 420.)

Tax on deficiency in transportation on the quantity of spirits withdrawn from distillery warehouse for export may be collected

by distraint as well as by suit upon the transportation bond. (16 Op. Atty. Gen., 634; 25 Int. Rev. Rec., 342.)

The shipment of domestic spirits to a foreign country and their subsequent return to the United States do not constitute an exportation and reimportation within the contemplation of law, where the spirits were shipped abroad with the intention of being returned to this country. (17 Op. Atty. Gen., 579; 29 Int. Rev. Rec., 225; 27 Op. Atty. Gen., 113.)

Spirits so shipped are liable to forfeiture under the provisions of section 3299, Revised Statutes, and every person making such shipment is also liable to the penalties imposed by section 3296, Revised Statutes. (Cir. No. 733; T. D. 1458.)

Extending bonding period in case of spirits to be exported. (18 Op. Atty. Gen., 92; 30 Int. Rev. Rec., 405.)

Condition of export bond being broken through failure to withdraw spirits from distillery warehouse, tax should be assessed, bond may be sued, or tax may be collected by distraint. (18 Op. Atty. Gen., 246 (Garland); 31 Int. Rev. Rec., 246.)

Railroad companies and stockholders in incorporated distilling companies, as sureties on transportation bonds. (29 Int. Rev. Rec., 177, 185.)

Tax on loss in distillery warehouse after filing export bond and before actual withdrawal. (*United States v. Thompson*. 32 Int. Rev. Rec., 166; 142 U. S., 471.)

Suit to restrain the collector from refusing to accept export bonds. (*Miles v. Johnson*, collector, 40 Int. Rev. Rec., 10.)

Flagler v. Kidd, 78 Fed. Rep., 341, 343, reversing 54 Id., 367.

Transportation and warehousing bonds, Forms 235 and 351, for distilled spirits, transferred to a general or special bonded warehouse, may be executed in *duplicate* instead of in triplicate, as heretofore required. (T. D. 1548, Oct. 5, 1909.)

See notes under section 3330, Revised Statutes.

[SEC. 3330b.] [See. 1, act of Dec. 20, 1879 (21 Stat., 59).] Allowance for leakage or loss during transportation.
That where spirits are withdrawn from distillery warehouses for exportation according to law, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to the port of export; nor shall any assessment be collected for such loss or leakage where the same has not been paid on distilled spirits exported since the first day of May, eighteen hundred and seventy-eight.

SEC. 2. That where the spirits provided for in the preceding section are covered by a valid claim of insurance in excess of the market value thereof, exclusive of the tax, the tax upon such spirits shall not be remitted to the extent of such excessive insurance.

See sections 3221 and 3223, Revised Statutes, as to spirits accidentally destroyed in warehouse.

Section 15, act of May 28, 1880, page 336, as to losses during transfers from distillery warehouses to manufacturing warehouses.

United States v. Mullins (119 Fed. Rep., 334).

In any assessment growing out of the regauge or claim for loss an appeal lies to the Commissioner of Internal Revenue, whose decisions are final. (*Corning v. United States* (1899), 34 Ct. Cls., 272.)

Articles shipped to the Philippine Islands. (Sec. 6, act of Mar. 8, 1902, p. 375.)

When spirits are insured.

No provision has been made for like shipments of articles to Porto Rico free of tax or with benefit of drawback. (Sec. 5, act Aug. 5, 1901.)

Articles shipped to the Canal Zone. (25 Op. Atty. Gen., 324.)

Regulations relative to the exportation of distilled spirits free of tax or with benefit of drawback. (No. 29, Revised.)

Release of distillery before judgment, in what cases. SEC. 3331. No distillery nor distilling-apparatus seized for any violation of law shall be released to the claimant or to any intervening party before judgment, except in case of a distillery for which bond has been given and which has a registered producing capacity of one hundred and fifty proof gallons or more per day, on showing, by sufficient affidavits, that there are hogs or other live stock, not less than 50 head in number, depending for their feed on the products of said distillery, which would suffer injury if the business of such distillery is stopped. Such distillery, in that case, may be released to the claimant, or to any other intervening party, at the discretion of the court, on a bond to be given and approved in open court, with two or more sureties, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court.

Whisky seized for forfeiture and released on bond. (United States *v.* 18 Barrels High Wines; 25 Fed. Cas. (No. 15033), 985; 8 Blatch., 475.)

Distilling apparatus seized for forfeiture, and application made for its release on bond. (United States *v.* 2 Tons of Coal; 28 Fed. Cas., 320; 5 Blatch., 386; United States *v.* Distillery, etc., of J. C. McCoy et al.; (25 Fed. Cas., 864; 21 Int. Rev. Rec., 165.)

Nature of bond. (U. S. *v.* Bergenthal, 29 Fed. Rep., 444.)

Stills, etc., to be destroyed in certain cases. SEC. 3332, [*as amended by sec. 5, act of Mar. 1, 1879 (20 Stat., 327).*] When a judgment of forfeiture, in any case of seizure, is recovered against any distillery used or fit for use in the production of distilled spirits, because no bond has been given, or against any distillery used or fit for use in the production of spirits, having a registered producing capacity of less than one hundred and fifty gallons a day, for any violation of law, of whatever nature, every still, doubler, worm, worm-tub, mash-tub, and fermenting-tub therein shall be so destroyed as to prevent the use of the same or of any part thereof for the purpose of distilling; and the materials shall be sold as in case of other forfeited property.

And in case of seizure of a still, doubler, worm, worm-tub, mash-tub, fermenting-tub, or other distilling-apparatus, having a less producing capacity than one hundred and fifty gallons per day, for any offense involving forfeiture of the same, where said apparatus shall be of less than five hundred dollars' value, and where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose of distilling: *Provided,* That such destruction shall be in the presence of at least one credible witness, and that such witness shall unite with the said officer in a duly sworn report

of said seizure and destruction, to be made to the Commissioner of Internal Revenue, in which report they shall set forth the grounds of the claim of forfeiture, the reasons for such seizure and destruction, their estimate of the fair cash value of the apparatus destroyed, and also of the materials remaining after such destruction, and a statement that, from facts within their own knowledge, they have no doubt whatever that said distilling apparatus was set up for use and not registered, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove the same to a place of safe storage.

Within one year after such destruction the owner of the apparatus so destroyed may make application to the Secretary of the Treasury through the Commissioner of Internal Revenue, for reimbursement of the value of the same; and unless it shall be made to appear to the satisfaction of the Secretary and the Commissioner that said apparatus had been used in the unlawful distillation of spirits, the Secretary shall make an allowance to said owner, not exceeding the value of said apparatus, less the value of said materials as estimated in said report; and if the claimant shall thereupon satisfy said Secretary and Commissioner that said unlawful use of the apparatus had been without his consent or knowledge, he shall still be entitled to such compensation, but not otherwise. And in case of a wrongful seizure and destruction of property under the foregoing provisions, the owner thereof shall have right of action on the official bond of the officer who occasioned the destruction for all damages caused thereby.

The words "judgment of forfeiture" include cases of forfeiture under section 3460. (33 Int. Rev. Rec., 397.)

State of North Carolina v. Thos. H. Vanderford. Indictment for a wanton and willful injury to personal property. (34 Int. Rev. Rec., 190.)

SEC. 3333. Whenever seizure is made of any distilled spirits found elsewhere than in a distillery or distillery warehouse, or other warehouse for distilled spirits authorized by law, or than in the store or place of business of a rectifier, or of a wholesale liquor-dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law to be made in the books of the owner of such spirits, or of the store-keeper, wholesale dealer, or rectifier, have not been made at the time or in the manner required, or in respect to which the owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been

Owner may be reimbursed in certain cases on application within one year.

Wrongful seizures; officer liable.

Burden of proof on claimant.

committed, and that all the requirements of the law in relation to the payment of the tax have been complied with.

Where evidence is introduced tending to show that true entries and returns relative to the spirits have not been made, the burden is thrown upon the claimant to prove regularity. (U. S. v. 18 Bbls. of High Wines, 8 Blatchf., 475; Fed. Cas. No. 15033. 199 Bbls. of Whiskey *v.* United States, 94 U. S., 86. U. S. v. 8 Casks of Whisky, 7 Int. Rev. Rec., 4; Fed. Cas. No. 15030. U. S. v. 508 Bbls. of Spirits, 5 Blatchf., 407, Fed. Cas. No. 15113. United States *v.* Six Barrels Distilled Spirits, 6 Int. Rev. Rec., 187; Fed. Cas. No. 15114. U. S. v. Sykes, 58 Fed. Rep., 1000. Twenty-Six Barrels and Seventeen Tierces of Distilled Spirits, Fed. Cas. No. 14283.)

This provision requiring affirmative proof by claimant is not unconstitutional. (U. S. v. 78 Bbls., 7 Int. Rev. Rec. 4; Fed. Cas. No. 16257.)

SEC. 3334, [as amended by sec. 5, act Mar. 1, 1879 (20

Spirits sold under judicial process subject to Stat., 327).] All distilled spirits forfeited to the United States, sold by order of court, or under process of dis-

taint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. And any distilled spirits heretofore condemned, and now in the possession of the United States, shall be sold as herein provided. If any tax-paid stamps are affixed to any cask or package so condemned, such stamps shall be obliterated and destroyed by the collector or marshal after forfeiture, and before such sale.

PROVISION where spirits will not sell for price equal to tax. *Provided: That in all cases wherein it shall appear that any distilled spirits offered for sale on distraint for taxes, where the taxes on such spirits have not been paid, or offered for sale for the benefit of the United States as forfeited spirits under order of court or under proceeding pursuant to section thirty-four hundred and sixty of the Revised Statutes, will not, by reason of such spirits being below proof, bring [bring] a price equal to the taxes due and payable thereon, but will bring a price equal to, or greater than, the tax on said spirits, computed only upon the proof-gallons contained in the packages, without regard to the greater number of wine-gallons contained therein, then, and in such case, upon sale being so made, tax-paid stamps to the amount required to stamp such spirits as if the tax thereon were only on the proof-gallons thereof, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered. Any collector using or furnishing stamps in manner aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp account with the department. In such cases, the officer selling the distilled spirits shall affix, or cause to be affixed, to the same the tax-paid stamps so provided, and shall write across the face of such stamps the true number of*

proof and wine gallons contained in the package, the amount of tax actually paid thereon, and also the words "Affixed under provisions of act of _____, 1879" (inserting the date of the approval of this act).

In case spirits which have once paid the tax are seized and sold under process of distraint for the collection of an assessed tax they are not required to be sold subject to tax.

Foreign distilled spirits not liable to tax imposed under the internal-revenue laws when forfeited under the provisions of the customs laws. (24 Int. Rev. Rec., 393.)

As to destruction of spirits which will not sell for a price equal to tax on the proof gallons see last provision of section 3450, p. 357.

IMPORTED LIQUOR STAMPS, ETC.

[SEC. 11.] [Act of Mar. 1, 1879 (20 Stat., 327).] That all distilled spirits, wines, and malt liquors, imported in pipes, hogsheads, tierces, barrels, casks, or other similar packages, shall be first placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected, marked, and branded by a United States customs-gauger, and a stamp affixed to each package, indicating the date and particulars of such inspection; and the Secretary of the Treasury is hereby authorized to prescribe the form of, and provide, the requisite stamps, and to make all regulations which he may deem necessary and proper for carrying the foregoing requirements into effect.

Any pipe, hogshead, tierce, barrel, cask, or other package withdrawn from public store or bonded warehouse after the thirtieth day of June, eighteen hundred and seventy-nine, purporting to contain imported liquor, found without having thereon the stamp hereby required, shall be, with its contents, forfeited to the United States; and whenever any cask or package of imported distilled spirits of not less than five wine-gallons is filled for shipment, sale, or delivery on the premises of any wholesale liquor-dealer, the same shall be stamped with a special stamp for imported spirits, under such rules and regulations as the Commissioner of Internal Revenue has prescribed, or may hereafter prescribe, in the case of domestic distilled spirits.

Forfeiture.

Special stamp when packages of imported spirits are filled on the premises of a wholesale liquor dealer.

Reimportation of articles exported (p. 337).

Stamps for reimported domestic spirits. (27 Int. Rev. Rec., 333.)

As to imported liquors. (See tariff act of Aug. 5, 1909; par. 300.)

[SEC. 12.] [Act of Mar. 1, 1879 (20 Stat., 327), as amended by sec. 12, act of May 28, 1880 (21 Stat., 145).] That every person who empties or draws off, or causes to be emptied or drawn off, the contents of any package of imported liquors stamped as above required, shall, at the time of such emptying, efface, obliterate, and destroy the stamp thereon, and also all other marks or brands which

When packages of imported liquors are emptied stamps to be effaced.

shall have been placed thereon in accordance with the law or regulations concerning imported liquors. * * *

Penalty for not effacing stamps.

Sec. 3324.

Every cask or other package from which the stamp for imported liquors required by this act to be placed thereon shall not be effaced, obliterated, or destroyed, on emptying such package, shall be forfeited, and the same may be seized by any officer of internal revenue wherever found; and all the provisions and penalties of section thirty-three hundred and twenty-four of the Revised Statutes of the United States, relating to empty casks or packages from which the marks, brands, or stamps have not been effaced or obliterated, and relating to the removal of stamps from packages, and to having in possession any stamps so removed, shall apply to the stamps for imported spirits herein provided for, and to the casks or other packages on which such stamps shall have been used.

United States *v.* Morris Spiegel (116 U. S., 270; 32 Int. Rev. Rec., 54).

Penalty for dealing in or using empty casks with imported stamps, etc. [SEC. 13.] [*Act of Mar. 1, 1879, as amended by sec. 13, using empty act of May 28, 1880 (21 Stat., 145).*] That if any person shall purchase or sell, with the imported-liquor stamp marks, etc., herein required remaining thereon, or any of the marks or

brands which shall have been placed thereon in accordance with the laws or regulations concerning imported liquors remaining thereon, any cask or other package, after the same has been once used to contain imported liquors and has been emptied; or if any person shall use or have in possession such cask or package, with any imitation of such marks or brands, for the purpose of placing domestic distilled spirits therein for sale, * * * every such cask or package, with its contents, if any, shall be forfeited to the United States.

Penalty.

And every such person who shall violate any of the provisions of this section shall be liable to a penalty of two hundred dollars for every such cask or package so purchased, sold, manufactured, used, or had in possession.

Grape brandy used for the fortification of wine.

Wine spirits may be used free of tax.

SEC. 42. [*Act of Oct. 1, 1890 (26 Stat., 621).*] That any producer of pure sweet wines, who is also a distiller, authorized to separate from fermented grape-juice, under internal-revenue laws, wine spirits, may use, free of tax, in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products, as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe, so much of such wine spirits so separated by him as may be necessary to fortify the wine for the preservation of the saccharine matter contained therein:

Limitations.

Provided, That the wine spirits so used free of tax shall not be in excess of the amount required to introduce into

such sweet wines in (an) alcoholic strength equal to fourteen per centum of the volume of such wines after such use:

Provided further, That such wine containing after such fortification more than twenty-four per centum of alcohol, as defined by section thirty-two hundred and forty-nine of the Revised Statutes, shall be forfeited to the United States:

Provided further, That such use of wine spirits free from tax shall be confined to the months of August, September, October, November, December, January, February, March, and April of each year.

The Commissioner of Internal Revenue, in determining the liability of any distiller of fermented grape-juice to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computation for the wine spirits used by him in preparing sweet wine under the provisions of this section.

SEC. 43. [Act of Oct. 1, 1890 (26 Stat., 567) as amended by sec. 68, act of Aug. 28, 1894 (28 Stat., 509), and act of June 7, 1906 (34 Stat., 215).] That the wine spirits mentioned in section forty-two of this Act is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues, commonly known as grape brandy; and the pure sweet wine, which may be fortified free of tax, as provided in said section, is fermented grape juice only, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided; and such sweet wine shall contain not less than four per centum of saccharine matter, which saccharine strength may be determined by testing with Balling's saccharometer or must scale, such sweet wine, after the evaporation of the spirits contained therein, and restoring the sample tested to original volume by addition of water:

Provided, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar or pure anhydrous sugar to the pure grape juice aforesaid, or the fermented product of such grape juice prior to the fortification provided by this Act for the sole purpose of perfecting sweet wines according to commercial standard, or the addition of water in such quantities only as may be necessary in the mechanical operation of grape conveyors, crushers, and pipes leading to fermenting tanks, shall not be excluded by the definition of pure sweet wine aforesaid:

Provided, however, That the cane or beet sugar, or pure anhydrous sugar, or water, so used shall not in either case

Alcoholic strength.

Forfeiture.

Confined to certain months.

Assessments under section 3309, credits.

Wine spirits defined.

When water may be used.

be in excess of ten per centum of the weight of the wine to be fortified under this Act:

And provided further, That the addition of water herein authorized shall be under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; but in no case shall such wines to which water

A 1 e o h o l i c has been added be eligible for fortification under the provisions of this Act where the same, after fermentation and before used, fortification, have an alcoholic strength of less than five per centum of their volume.

SEC. 44. That any person who shall use wine spirits, as defined by section fifty-four (*forty-three*) of this act, or other spirits on which the internal-revenue tax has not been paid, otherwise than within the limitations set forth in section fifty-five (*forty-two*) of this act, and in accordance with the regulations made pursuant to this act, shall

Penalty for unlawful use of wine spirits.

be liable to a penalty of double the amount of the tax on the wine spirits or other spirits so unlawfully used. Whenever it is impracticable in any case to ascertain the quantity of wine spirits or other spirits that have been used in violation of this act in mixtures with any wines, all alcohol contained in such unlawful mixtures of wine with wine spirits or other spirits in excess of ten per centum shall be held to be unlawfully used:

In case of water illegally added.

Provided, however, That if water has been added to such unlawful mixtures, either before, at the time of, or after

Alcohol by volume, not by weight.

such unlawful use of wine-spirits or other spirits, all the alcohol contained therein shall be considered to have been

unlawfully used. In reference to alcoholic strength of wines and mixtures of wines with spirits in this act the measurement is intended to be according to volume and not according to weight.

Withdrawal of spirits from warehouse free of tax.

SEC. 45. That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any pro-

ducer of pure sweet wines as defined by this act may withdraw wine spirits from any special bonded warehouse free of tax, in original packages, in any quantity not less than eighty wine-gallons, and may use so much of the same as may be required by him, under such regulations, and after the filing of such notices and bonds, and the keeping of such records, and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the limitations and provisions as to uses, amount to be used, and period for using the same set forth in section fifty-three (*forty-two*) of this act; and

the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized, whenever he shall deem it to be necessary for the prevention of violations of this law, to prescribe that wine-spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying-house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by his regulation shall be stored.

The use of wine-spirits free of tax for the fortification of sweet wines under this act shall be begun and completed at the vineyard of the wine-grower where the grapes are crushed and the grape juice is expressed and fermented, such use to be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine-spirits and for rewarehousing or for payment of the tax on any portion of such wine-spirits which remain not used in fortifying pure sweet wines.

Circular 637, T. D. 603; Circular 730, T. D. 1436.

SEC. 46. That wine-spirits may be withdrawn from special bonded warehouses at the instance of any person desiring to use the same to fortify any wines, in accordance with commercial demands of foreign markets, when such wines are intended for exportation, without the payment of tax on the amount of wine spirits used in such fortification, under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security to prevent the use of such wine-spirits free of tax otherwise than in the fortification of wine intended for exportation, and for the due exportation of the wine so fortified, as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and all of the provisions of law governing the exportation of distilled spirits free of tax, so far as applicable, shall apply to the withdrawal and use of wine-spirits and the exportation of the same in accordance with this section; and the Commissioner of Internal Revenue is authorized, subject to approval by the Secretary of the Treasury, to prescribe that wine spirits intended for the

Commissioner
may require use
to be at a certain
distance from dis-
tillery, etc.

Use of spirits
free of tax to be
at vineyard, un-
der super-vision
of officer.

Regulations.

Withdrawal
of spirits to
fortify wines
intended for ex-
port.

fortification of wines under this section shall not be introduced into such wines except under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Whenever such wine-spirits are withdrawn as provided herein for the fortification of wines intended for exportation by sea they shall be introduced into such wines only after removal from storage and arrival alongside of the vessel which is to transport the same; and whenever transportation of such wines is to be effected by land carriage the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as to sealing packages and vehicles containing the same, and as to the supervision of transportation from the point of departure, which point shall be determined as the place where such wine-spirits may be introduced into such wines to the point of destination as may be necessary to insure the due exportation of such fortified wines.

As to bonds, see Section 3, Act of June 7, 1906, p. 233.

Provisions of Regulations 29, governing the exportation of distilled spirits, extended to withdrawal of brandy for use in fortifying wines for export, and to the exportation of such fortified wines. (T. D. 1663.)

Re-importation. SEC. 47. That all provisions of law relating to the re-importation of any goods of domestic growth or manufacture which were originally liable to an internal-revenue tax shall be, as far as applicable, enforced against any domestic wines sought to be re-imported; and duty shall be levied and collected upon the same when re-imported, as an original importation.

Penalty for using spirits in fortifying wines contrary to law. SEC. 48. That any person using wine spirits or other spirits which have not been tax-paid in fortifying wine otherwise than as provided for in this act, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished for each offense by a fine of not more than two thousand dollars, and for every offense other than the first also by imprisonment for not more than one year.

Recovery of spirits used in fortifying wine. SEC. 49. [Act Oct. 1, 1890 (26 Stat., 567), as amended by Sec. 2, Act June 7, 1906 (34 Stat., 215).] That wine spirits used in fortifying wines may be recovered from such wine only on the premises of a duly authorized grape-brandy distiller; and for the purpose of such recovery wine so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on a product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape juice and that obtained from the added distilled spirits, *subject, however, to the provisions of section thirty-*

three hundred and nine of the Revised Statutes of the United States, as amended by section six of the Act entitled "An Act to amend the laws relating to internal revenue," approved March first, eighteen hundred and seventy-nine; and such spirits so recovered may be used by such distiller to fortify wines as authorized by section forty two of the aforesaid Act, approved October first, eighteen hundred and ninety.

[An act to amend existing laws relating to the fortification of pure sweet wines, approved June 7, 1906 (34 Stat., 215).]

SEC. 3. That the Commissioner of Internal Revenue is hereby authorized to assign at each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers, in the capacity of gaugers, for special duties as may be necessary for the proper supervision of the making and fortifying of such wines, and the compensation of such officers shall not exceed five dollars per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, but not to exceed two dollars per day for said board bills; and to cover the expenses to the Government attending the making and fortification of such sweet wines there shall be levied and assessed against each maker of such wines, and collected monthly, a charge of three cents on each taxable gallon of brandy used by him in the fortification of such wines during the preceding month. That bonds hereafter given under the provisions of the aforesaid Act of October first, eighteen hundred and ninety, as amended, shall be conditioned for the payment of the tax on all brandy removed thereunder and not used and accounted for within the time and in the manner required by law and regulations, and for the payment of all charges herein imposed on the brandy so withdrawn and used; and the said bonds shall contain such other conditions as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may by regulation prescribe.

SEC. 4. That where brandy to be used in the fortification of wine is distilled on premises adjacent to the winery premises the Commissioner of Internal Revenue may, in his discretion, authorize the erection on either of said premises of fermenting vats for material to be used either in the manufacture of such wines or the brandy to be used in the fortification thereof; and all such materials used received on either of said premises shall be under the supervision of the officer assigned to such winery, and shall be accounted for at such times and in such manner as the Commissioner may direct.

SEC. 5. That the provisions of sections thirty-two hundred and twenty-one and thirty-two hundred and twenty-three of the Revised Statutes of the United States, as amended by an Act approved March first, eighteen hundred and seventy-nine, are hereby extended to grape

Gauger to be assigned at each winery.

Wine maker charged three cents on each taxable gallon of brandy used.

Bonds.

Supervision of material received on winery premises.

Abatement of tax, §§3221, 3223.

brandy withdrawn for use in the fortification of sweet wines, and which, prior to such use, is accidentally destroyed by fire or other casualty while stored in the fortifying room on the winery premises.

- Recovery of brandy or wine spirits; rectifying, etc.** SEC. 6. That any person who by any process recovers brandy or wine from wines fortified under the provisions of the aforesaid Act approved October first, eighteen hundred and ninety, or amendments thereto, any brandy or wine spirits used in the manufacture or fortification of said wine, otherwise than is provided for in said Act and its amendments, or who shall rectify, mix, or compound with other distilled spirits such fortified wines or grape brandy or wine spirits unlawfully recovered therefrom, shall, on conviction, be punished for each such offense by a fine of not less than two hundred dollars nor more than one thousand dollars. But the provisions of this section, and the provisions of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, shall not be held to apply to the blending of pure sweet wines fortified under the provisions of the said Act of October first, eighteen hundred and ninety, or amendments thereto, where such wines are blended for the sole purpose of perfecting the same according to commercial standard.

Regulations No. 28, revised, relative to withdrawal free of tax of spirits for fortification of pure sweet wines.

Sweet wines fortified with spirits free from tax can not be used by a rectifier in the production of imitation, spurious, or compound liquors. (T. D. 539, June 26, 1902.)

Grape juice treated with the fumes of sulphur not eligible for fortification as pure sweet wine under tariff act of October 1, 1890, and amendments thereto. (T. D. 1314.)

Suspension of the provision of regulations prohibiting use of fortified wines in the manufacture or preparation of patent or proprietary medicines or compounds. (T. D. 1435.)

[Act of March 3, 1897 (29 Stat., 626).]

AN ACT To allow the bottling of distilled spirits in bond.

- Bottling of distilled spirits in bond.** SEC. 1. That whenever any distilled spirits deposited in the warehouse of a distillery having a surveyed daily capacity of not less than twenty bushels of grain, which capacity or not less than twenty bushels thereof is commonly used by the distiller, have been duly entered for withdrawal upon payment of tax, or for export in bond, and have been gauged and the required marks, brands, and tax-paid stamps or export stamps, as the case may be, have been affixed to the package or packages containing the same, the distiller or owner of said distilled spirits, if he has declared his purpose so to do in the entry for withdrawal, which entry for bottling purposes may be made by the owner as well as the distiller, may remove such spirits to a separate portion of said warehouse which shall be set apart and used exclusively for that purpose, and there, under the supervision of a United States storekeeper, or storekeeper and gauger, in charge of such warehouse, may

Spirits entered for bottling purposes in ware house.

immediately draw off such spirits, bottle, pack, and case the same: *Provided*, That for convenience in such process any number of packages of spirits of the same kind, differing only in proof, but produced at the same distillery by the same distiller, may be mingled together in a cistern provided for that purpose, but nothing herein shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition or the subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as herein authorized; nor shall there be at the same time in the bottling room of any bonded warehouse any spirits entered for withdrawal upon payment of the tax and any spirits entered for export: *Provided also*, That under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the provisions of this Act may be made to apply to the bottling and casing of fruit brandy in special bonded warehouses.

Every bottle when filled shall have affixed thereto and passing over the mouth of the same such suitable adhesive engraved strip stamp as may be prescribed, as hereinafter provided, and shall be packed into cases to contain six bottles or multiples thereof, and in the aggregate not less than two nor more than five gallons in each case, which shall be immediately removed from the distillery premises. Each of such cases shall have affixed thereto a stamp denoting the number of gallons therein contained, such stamp to be affixed to the case before its removal from the warehouse, and such stamps shall have a cash value of ten cents each, and shall be charged at that rate to the collectors to whom issued, and shall be paid for at that rate by the distiller or owner using the same.

And there shall be plainly burned on the side of each case, to be known as the Government side, the proof of the spirits, the registered distillery number, the State and district in which the distillery is located, the real name of the actual bona fide distiller, the year and distilling season, whether spring or fall, of original inspection or entry into bond, and the date of bottling, and the same wording shall be placed upon the adhesive engraved strip stamp over the mouth of the bottle. It being understood that the spring season shall include the months from January to July, and the fall season the months from July to January.

And no trade marks shall be put upon any bottle unless the real name of the actual bona fide distiller shall also be placed conspicuously on said bottle.

Combination cases of spirits bottled in bond. (T. D. 888.)
Case stamps for distilled spirits bottled for export. (Cir. No. 6; Int. Rev. Cir. No. 489, Jan. 6, 1898; T. D. 18763.)

Regulations.

Stamp, how affixed.

Cases to have stamp affixed.

Branding of cases.

Trade marks.

Change of date on and use of case stamps printed for bottling distilled spirits in fall of 1897. (Cir. No. 10; Int. Rev. 490, Jan. 12, 1898; T. D. 18802; Art. 21, Reg. No. 23.)

Case stamps. (Cir. No. 55; Int. Rev. 492, Mar. 29, 1898; T. D. 19155; Cir. No. 552; T. D. 32, 1900.)

Regulations.

What the Government stamp on bottled-in-bond goods guarantees as to purity or quality of the spirits. The Government assumes no responsibility with respect to claims of dealers in advertising spirits. (T. D. 1299.)

Using undersized bottles or underfilling bottles when bottling spirits in bond prohibited. Suspension of issue of stamps on account of persistent violation of requirements, and forfeiture of goods in certain cases. (Circular letter, Oct. 6, 1897; 43 Int. Rev. Rec., 374.)

Bottling of spirits in bond. No foreign materials to be added. (T. D. 1433.)

Bottling warehouses for use of different distilleries. (T. D. 531; Cir. No. 631; T. D. 555; Regulations No. 23, rev., p. 12.)

Cases of spirits bottled in bond should be entered on Form 52. (T. D. 808; Regulations No. 23, rev., p. 23.)

Testing bottles for containing bottled-in-bond spirits. (Cir. No. 681; T. D. 991 and T. D. 1063; Regulations No. 23, rev., p. 18.)

Stamps and brands on cases of bottled-in-bond whisky should be kept intact. (T. D. 1076.)

Discontinuance of serial numbers on case and strip stamps. (T. D. 1573.)

Caution notice on spirits bottled in bond. (T. D. 1491.)

Tax will be assessed and collected on gains in bottling in excess of one-half gallon per package, but in ascertaining the quantity to be assessed credit will be allowed for the excessive loss paid at the time of withdrawal. (Letter to Collector Heiner, Oct. 25, 1910.)

Bottled-in-bond whisky. Where proof is less than 99 per cent. (T. D. 943.)

SEC. 2. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulations, prescribe the mode of separating and securing the additional warehouse, or portion of the warehouse hereinbefore required to be set apart, the manner in which the business of bottling spirits in bond shall be carried on, the notices, bonds, and returns to be given and accounts and records to be kept by the persons conducting such business, the mode and time of inspection of such spirits, the accounts and records to be kept and returns made by the Government officers, and all such other matters and things, as in his discretion, he may deem requisite for a secure and orderly supervision of said business; and he may also, with the approval of the Secretary of the Treasury, prescribe and issue the stamps required.

The distiller may, in the presence of the United States storekeeper or storekeeper and gauger, remove by straining through cloth, felt, or other like material any charcoal, sediment, or other like substance found therein, and may

**Inspection
spirits.**

whenever necessary reduce such spirits as are withdrawn for bottling purposes by the addition of pure water only to one hundred per centum proof for spirits for domestic use, or to not less than eighty per centum proof for spirits for export purposes, under such rules and regulations as may be prescribed by the Commissioner of Internal Revenue

**Spirits reduced
by adding water.**

with the approval of the Secretary of the Treasury; and no spirits shall be withdrawn for bottling under this Act until after the period shall have expired within which a distiller may request a regauge of distilled spirits as provided in section fifty of the Act of August twenty-eighth, eighteen hundred and ninety-four.

No spirits to be withdrawn for bottling until the expiration of four years from the date of deposit in warehouse. (Art. 14, Regulation No. 23.)

A filtering apparatus, packed with cloth, felt, or other like material, such as cotton fiber or wood or paper pulp, may be used for straining spirits to be bottled in bond. Permission to use such filters will be granted only upon the express condition that the packing material is one mentioned in the statute, or similar thereto, and that in no case shall charcoal, boneblack, etc., be used, as such materials might effect changes in the spirits other than the mechanical removal of matter in suspension. (T. D. 21106, 1899; Regulations No. 23, rev., p. 11.)

The distiller is responsible for the correctness of the proof. (T. D. 930; T. D. 936.)

SEC. 3. That all distilled spirits intended for export under the provisions of this Act shall be inspected, bottled, cased, weighed, marked, labeled, stamped, or sealed in such manner and at such time as the Commissioner of Internal Revenue may prescribe; and the said Commissioner, with the approval of the Secretary of the Treasury, may provide such regulations for the transportation, entry, reinspection, and lading of such spirits for export as may from time to time be deemed necessary; and all provisions of existing law relating to the exportation of distilled spirits in bond, so far as applicable, and all penalties therein imposed, are hereby extended and made applicable to distilled spirits bottled for export under the provisions of this Act, but no drawback shall be allowed or paid upon any spirits bottled under this Act.

Reimportation of distilled spirits bottled in bond below proof for export. (T. D. 1006.)

Bottled spirits for export. (Cir. 719; T. D. 1338.)

SEC. 4. That where, upon inspection at the bonded warehouse in which the spirits are bottled as aforesaid, the quantity so bottled and cased for export is less than the quantity actually contained in the distiller's original casks or packages at the time of withdrawal for that purpose the tax on the loss or deficiency so ascertained shall be paid before the removal of the spirits from such warehouse, and the tax so paid shall be received and accounted for by the collector in such manner as the Commissioner of Internal Revenue may prescribe.

SEC. 5. That where, upon reinspection at the port of entry, any case containing or purporting to contain distilled spirits for export is found to have been opened or tampered with, or where any mark, brand, stamp, label, or seal placed thereon or upon any bottle contained therein has been removed, changed, or willfully defaced, or where upon such reinspection any loss or discrepancy is found to exist as to the contents of any case so entered

Spirits for ex-
port.

Existing laws
made applicable.

No drawback.

In case of loss
or deficiency.

Reinspection.

for export, the tax on the spirits contained in each such case at the time of its removal from warehouse shall be collected and paid.

Penalties.

SEC. 6. That any person who shall reuse any stamp provided under this Act after the same shall have been once affixed to a bottle as provided herein, or who shall reuse a bottle for the purpose of containing distilled spirits which has once been filled and stamped under the provisions of this Act without removing and destroying the stamp so previously affixed to such bottle, or who shall, contrary to the provisions of this Act or of the regulations issued thereunder remove or cause to be removed from any bonded warehouse any distilled spirits inspected or bottled under the provisions of this Act, or who shall bottle or case any such spirits in violation of this Act or of any regulation issued thereunder, or who shall, during the transportation and before the exportation of any such spirits, open or cause to be opened any case or bottle containing such spirits, or who shall willfully remove, change, or deface any stamp, brand, label, or seal affixed to any such case or to any bottle contained therein, shall for each such offense be fined not less than one hundred nor more than one thousand dollars, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States.

Refilling with spirits bottles previously used for bottling spirits in bond without destroying the stamps. (Cir. No. 647, Sept. 19, 1903; T. D. 696.)

Refilling bottles. Guilty intent is not an element of the offense. The principal is criminally liable for the acts of his agent or employee. (U. S. v. Guthrie, 171 Fed. Rep., 528; T. D. 1520.)

Counterfeiting,
etc., stamps.

SEC. 7. That every person who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under any provision of this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or who shall make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required by this Act, shall on conviction be punished by a fine not exceeding one thousand dollars and by imprisonment at hard labor not exceeding five years.

Act of Aug. 8, 1890. SEC. 8. That nothing in this Act shall be construed to exempt spirits bottled under the provisions of this Act from the operation of chapter seven hundred and twenty-eight of the public laws of the Fifty-first Congress, approved August eighth, eighteen hundred and ninety.

Act of August 8, 1890 (26 Stat., 313): That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory,

and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (In re Rahrer, 140 U. S., 545; 37 Int. Rev. Rec., 230; Rhodes *v.* Iowa, 170 U. S., 412.)

Provisions of the criminal code (act of Mar. 4, 1909) relative to distilled spirits. (See Appendix, p. 421, 422.)

DENATURED ALCOHOL.

[Act of June 7, 1906 (34 Stat., 217).]

AN ACT For the withdrawal from bond, tax free, of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing materials.

SEC. 1. That from and after January first, nineteen hundred and seven, domestic alcohol of such degree of proof as may be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, may be withdrawn from bond without the payment of internal-revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner of Internal Revenue, who shall, with the approval of the Secretary of the Treasury, make all necessary regulations for carrying into effect the provisions of this Act.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this Act shall keep such books and records, execute such bonds and render such returns as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. Such books and records shall be open at all times to the inspection of any internal-revenue officer or agent.

SEC. 2. That any person who withdraws alcohol free of tax under the provisions of this Act and regulations made in pursuance thereof, and who removes or conceals same, or is concerned in removing, depositing or concealing same for the purpose of preventing the same from being denatured under governmental supervision, and

Domestic alcohol may be withdrawn tax-free for denaturation.

How and where denatured.

Denaturing material to be prescribed by Commissioner.

Books and records to be kept. Bonds to be given.

Penalty for improper withdrawal, use as a beverage, or for medicinal purpose.

any person who uses alcohol withdrawn from bond under the provisions of section one of this Act for manufacturing any beverage or liquid medicinal preparation, or knowingly sells any beverage or liquid medicinal preparation made in whole or in part from such alcohol, or knowingly violates any of the provisions of this Act, or who shall recover or attempt to recover by redistillation or by any other process or means, any alcohol rendered unfit for beverage or liquid medicinal purposes under the provisions of this Act, or who knowingly uses, sells, conceals, or otherwise disposes of alcohol so recovered or redistilled, shall on conviction of each offense be fined not more than five thousand dollars, or be imprisoned not more than five years, or both, and shall, in addition, forfeit to the United States all personal property used in connection with his business, together with the buildings and lots or parcels of ground constituting the premises on which said unlawful acts are performed or permitted to be performed:

May be recovered and redenatured.

Provided, That manufacturers employing processes in which alcohol, used free of tax under the provisions of this Act, is expressed or evaporated from the articles manufactured, shall be permitted to recover such alcohol and to have such alcohol restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury shall prescribe.

SEC. 3. (*Obsolete.*)

This section provided an appropriation for payment of an additional force of chemists, internal-revenue agents, inspectors, deputy collectors, clerks, laborers, and other assistants, the force authorized to be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for a period of two years without compliance with the conditions prescribed by the civil service act of January 16, 1883.

SEC. 4. (*Obsolete.*)

This section provided for a report to Congress at its next session of all appointments made under the provisions of this act and regulations prescribed and for a report of any additional legislation necessary to safeguard the revenue and secure a proper enforcement of the law.

[Amendment to the act of June 7, 1906.]

AN ACT To amend an Act entitled "An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing materials," approved June 7, 1906. (Act of Mar. 2, 1907; 34 Stat., 1250.)

Denatured alcohol may be used in manufacture of ether, chloroform, and definite chemical substances.

SEC. 1. That notwithstanding anything contained in the Act entitled "An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing material," approved June seventh, nineteen hundred and six, domestic alcohol when suitably denatured may be withdrawn from bond without the payment

of internal-revenue tax and used in the manufacture of ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol: *Provided*, That rum of not less than one hundred and fifty degrees proof may be withdrawn, for denaturation only, in accordance with the provisions of said Act of June seventh, nineteen hundred and six, and in accordance with the provisions of this Act.

Rum of not less than 150° proof may be withdrawn for denaturation.

SEC. 2. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may authorize the establishment of central denaturing bonded warehouses, other than those at distilleries, to which alcohol of the required proof may be transferred from distilleries or distillery bonded warehouse without the payment of internal-revenue tax, and in which such alcohol may be stored and denatured. The establishment, operation, and custody of such warehouses shall be under such regulations and upon the execution of such bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Central denaturing bonded warehouses may be established.

SEC. 3. That alcohol of the required proof may be drawn off, for denaturation only, from receiving cisterns in the cistern room of any distillery for transfer by pipes direct to any denaturing bonded warehouse on the distillery premises or to closed metal storage tanks situated in the distillery bonded warehouse, or from such storage tanks to any denaturing bonded warehouse on the distillery premises, and denatured alcohol may also be transported from the denaturing bonded warehouse, in such manner and by means of such packages, tanks or tank cars, and on the execution of such bonds, and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. And further, alcohol to be denatured may be withdrawn without the payment of internal-revenue tax from the distillery bonded warehouse for shipment to central denaturing plants in such packages, tanks and tank cars, under such regulations, and on the execution of such bonds as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Withdrawal by pipes direct from cisterns may be permitted, under prescribed regulations.

SEC. 4. That at distilleries producing alcohol from any substance whatever, for denaturation only, and having a daily spirit-producing capacity of not exceeding one hundred proof gallons, the use of cisterns or tanks of such size and construction as may be deemed expedient may be permitted in lieu of distillery bonded warehouses, and the production, storage, the manner and process of denaturing on the distillery premises the alcohol produced, and transportation of such alcohol, and the operation of such distilleries shall be upon the execution of such bonds and under such regulations as the Commissioner of Internal

Alcohol may be withdrawn from distillery warehouse for shipment to central denaturing bonded warehouse.

Distilleries having daily capacity not exceeding 100 proof gallons may produce alcohol for denaturation only.

Revenue, with the approval of the Secretary of the Treasury, may prescribe, and such distilleries may by such regulations be exempted from such provisions of the existing laws relating to distilleries as may be deemed expedient by said officials.

May be exempted from certain provisions of existing laws.

SEC. 5. That the provisions of this Act shall take effect on September first, nineteen hundred and seven.

Regulations concerning denatured alcohol, No. 30, rev. July 15, 1907, and Supplement No. 1, June 3, 1908.

Circular 721, April 27, 1908, relates to the use of stills by agricultural experiment stations, T. D. 1347.

Suggestions regarding the manufacture of denatured alcohol at small distilleries—Materials available for such use. (Int. Rev. Cir. 706, Sept. 26, 1907, T. D. 1242.)

Denatured-alcohol regulations explained. Instructions to collectors, revenue agents, and other internal-revenue field officers concerning the sale and use of denatured alcohol. (T. D. 1250, Oct. 12, 1907.)

Circular relative to reports of manufacturers or wholesale dealers handling denatured alcohol. (Cir. No. 732; T. D. 1438.)

Retail dealers permitted to draw off denatured alcohol from original packages and sell in quantities not exceeding 10 gallons at any one time. (T. D. 1392.)

Completely denatured alcohol can not be lawfully sold for bathing purposes or any medicinal use. (T. D. 1495.)

CHAPTER FIVE.

FERMENTED LIQUORS.

Sec.	Sec.
3335. Brewer's notice.	3347. Sour malt liquors, how removable without stamps.
3336 (amended). Bond.	3348. Brewers selling at retail at brewery.
3337. Books and monthly statement.	3349. Packages to be marked; penalty. One brewer purchasing from another.
[3337a.] Section 3337 construed. Assessment.	3350. Permit to carry on business at another place on account of accident.
3338. Monthly verification of entries in books.	3351. Unfermented worts sold to other brewers.
3339 (amended). Tax. Fractional parts of a barrel, how estimated.	3352. Fermented liquor removed from brewery without payment of tax forfeited. Absence of stamps to be notice and evidence.
[3339a.] Gallon defined.	3353. Removal or defacement of stamps; penalty.
3340 (amended). Evading tax, making or procuring false entries, etc.; penalty.	3354 (amended). Withdrawing fermented liquor from unstamped packages for bottling, or bottling on brewery premises; penalty. Fermented liquor permitted to be removed from brewery through pipe or conduit for bottling only.
3341 (amended). Stamps. Permits.	Act of June 18, 1890. Removal of fermented liquors for export without payment of tax.
3342 (amended). Stamps, how procured, affixed, and canceled. Penalty for fraud and neglect.	
3343. Selling, removing, or buying fermented liquor in packages without stamp or with twice-used stamp; penalty.	Brewer's notice of business.
3344. Drawing fermented liquor from package without stamp or without defacing stamp; penalty.	
3345. Removal for storage without stamps; penalties.	
3346 (amended). Making, selling, or using false or counterfeit stamps or permits, reusing stamps, having removed stamps in possession, selling same; penalty.	

SEC. 3335. Every brewer shall, before commencing or continuing business, file with the collector, or proper deputy collector, of the district in which he designs to carry it on a notice in writing, stating the name of the person, company, corporation, or firm, the names of the members of any such company or firm, the places of residence of such persons, a description of the premises on which the brewery is situated, and of his or their title thereto, and the name of the owner thereof.

A person manufacturing for sale a fermented liquor, made from a substitute for malt, must qualify as a brewer. (T. D. 646.)

Definition of brewer. Special tax of brewer. (Sec. 3244, p. 133.)

SEC. 3336 [*as amended by the act of Apr. 29, 1886 (24 Stat., 15.)*] Every brewer, on filing notice as aforesaid of his intention to commence or continue business, * * * shall execute a bond to the United States, to be approved by the collector of the district, in a sum equal to three

Bond.

times the amount of the tax which, in the opinion of the collector, said brewer will be liable to pay during any one month, and conditioned that he shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager-beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be kept, a book, in the manner and for the purposes hereinafter specified, which shall be open to inspection by the proper officers, as by law required; and that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid; *and he shall execute a new bond once in four years and whenever required so to do by said collector, in the amount above named and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval by said collector.*

In case of incorporated companies the bond must be executed in their corporate capacity and under their corporate seals and signatures.

In case of a brewing company not incorporated the name of the firm as well as of each member thereof must be recited in the bond, which should be signed by each member of the firm.

No provision is made for cancellation of bond where brewers have gone out of business before the expiration of the four years. (T. D. 648.)

A second bond given voluntarily during the four-year period is merely cumulative and does not release the first bond. (T. D. 834.)

Executors, administrators, assignees, and receivers continuing the business must execute a new bond.

Brewer's books. SEC. 3337. Every person who owns or occupies any brewery, or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence, as agent for the owner or occupant, or has in his possession or custody any brewing materials, utensils, or apparatus, used or intended to be used on said premises in the manufacture of beer, lager-beer, ale, porter, or other similar fermented liquors, either as owner, agent, or superintendent, shall, from day to day, enter, or cause to be entered, in a book to be kept by him for that purpose, the kind of such malt liquors, the estimated quantity produced in barrels, and the actual quantity sold or removed for consumption or sale in barrels or fractional parts of barrels. He shall also, from day to day, enter, or cause to be entered, in a separate book to be kept by him for that purpose, an account of all materials by him purchased for the purpose of producing such fermented liquors, including grain and malt.

Monthly statement. And he shall render to the collector, or the proper deputy collector, on or before the tenth day of each month, a true statement, in writing, in duplicate, taken from his books, of the estimated quantity in barrels of

such malt liquors brewed, and the actual quantity sold or removed for consumption or sale during the preceding month; and shall verify, or cause to be verified, the said statement, and the facts therein set forth, by oath, to be taken before the collector of the district, or proper deputy collector, according to the form required by law.

Said books shall be open at all times for the inspection of any collector, deputy collector, inspector, or revenue agent, who may take memorandums and transcripts therefrom.

United States v. Obermeyer (5 Ben., 541; 15 Int. Rev. Rec., 83; 27 Fed. Cas., 211). *United States v. Miller* (16 Int. Rev. Rec., 25; 25 Fed. Cas., 1257).

Brewers' returns.—Returns made by brewers of the amount of beer manufactured and sold by them are made under compulsion of law for but one purpose, namely, the collection of revenue for the United States, and copies thereof are not permitted to be furnished to any persons for other purposes. (T. D. 19443, 1898.) Verification of returns. (T. D. 1046.)

[SEC. 3337a.] [Act of May 13, 1876 (19 Stat., 53).] That nothing contained in section three thousand three hundred and thirty-seven of the Revised Statutes of the United States shall be so construed as to authorize an assessment upon the quantity of materials used in producing or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager-beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in section three thousand three hundred and thirty-nine of said statutes, and not otherwise:

See. 3337, R. S.,
construed.

Quantity of material used not
evidence for pur-
pose of taxation,
of quantity of liq-
uor produced.

Tax to be paid
as provided in
§3339, R. S.

Provided, That this act shall not apply to cases of fraud.

And provided further, That nothing in this act shall have the effect to change the present rules of law respecting evidence in any prosecution or suit.

Cases of fraud
excepted.

No change of
rules of law as to
evidence in suits,
etc.

Bergdoll v. Pollock, collector. (95 U. S., 337; 24 Int. Rev. Rec., 2.)

SEC. 3338. The entries made in such books shall, on or before the tenth day of each month, be verified by the oath of the person by whom they are made. The said oath shall be written in the book at the end of such entries, and be certified by the officer administering the same, and shall be in form as follows:

I do swear (or affirm) that the foregoing entries were made by me; and that they state truly, according to the best of my knowledge and belief, the estimated quantity of the whole amount of such malt liquors brewed, and the actual quantity sold, and the actual quantity removed, from the brewery owned by _____, in the county of _____; and, further, that I have no knowledge of any matter or thing required by law to be stated in said entries which has been omitted therefrom.

Monthly verifi-
cation of entries
in books.

And the owner, agent, or superintendent aforesaid shall also, in case the original entries made in his book were not

made by himself, subjoin thereto the following oath, to be taken in manner as aforesaid:

I do swear (or affirm) that, to the best of my knowledge and belief the foregoing entries fully set forth all the matters therein required by law; and that the same are just and true, and that I have taken all the means in my power to make them so.

Brewer required to enter all malt liquors in his book. "Malt liquor" and "fermented liquor" used synonymously. (First circuit (Mass.), 1874, United States *v.* Dooley, 21 Int. Rev. Rec., 115; 25 Fed. Cas. 890, No. 14984.)

A book of general accounts kept by a brewer in conducting his business can not be deemed a book of entries of materials purchased, or such a book as the statute requires. (United States *v.* Bellingstein, 16 Int. Rev. Rec., 92; Fed. Cas. No. 14566.)

Tax on fermented liquors.

SEC. 3339 [as amended by the act of Apr. 12, 1902 (32 Stat., 96).] There shall be paid on all beer, lager-beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, a tax of one dollar for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for any fractional part of a barrel. In estimating and computing such tax, the fractional parts of a barrel shall be halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel, containing less than one-eighth, shall be accounted one-eighth; more than one-eighth, and not more than one-sixth, shall be accounted one-sixth; more than one-sixth, and not more than one-fourth, shall be accounted one-fourth; more than one-fourth, and not more than one-third, shall be accounted one-third; more than one-third, and not more than one-half, shall be accounted one-half; more than one-half, and not more than one barrel, shall be accounted one barrel; and more than one barrel, and not more than sixty-three gallons, shall be accounted two barrels, or a hogshead. The said tax shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made, and in the manner and at the

Amendment of time hereinafter specified: *Provided, That in lieu of or in addition to the present requirements of law in that respect, all stamps used for denoting the tax upon fermented liquors or other taxes may, in the discretion of the Commissioner of Internal Revenue, be canceled by perforations to be made in such manner and form as the Commissioner may by regulations prescribe.*

Legislation of recent years affecting the rate of tax on fermented liquors is given for reference, as follows:

[Act of June 13, 1898 (30 Stat., 448).]

SEC. 1. That there shall be paid, in lieu of the tax of one dollar now imposed by law, a tax of two dollars on all beer, lager beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more

than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly: *Provided*, That a discount of seven and one-half per centum shall be allowed upon all sales by collectors to brewers of the stamps provided for the payment of said tax: *Provided further*, That the additional tax imposed in this section on all fermented liquors stored in warehouse to which a stamp had been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamps. * * *

SEC. 51. That this act shall take effect on the day next succeeding the date of its passage, except as otherwise specially provided for.

[Act of March 2, 1901 (31 Stat., 938).]

SEC. 1. That section one of the act entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, is hereby amended so as to read as follows:

"That there shall be paid, in lieu of the tax of one dollar now imposed by law, a tax of one dollar and sixty cents on all beer, lager beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly: *Provided*, That in lieu of or in addition to the present requirements of law in that respect, all stamps used for denoting the tax upon fermented liquors or other taxes may, in the discretion of the Commissioner of Internal Revenue, be canceled by perforations to be made in such manner and form as the Commissioner may by regulations prescribe." * * *

SEC. 15. That the provisions of this act shall take effect on and after the first day of July, nineteen hundred and one, except where otherwise expressly provided.

[Act of April 12, 1902 (32 Stat., 96).]

SEC. 1. That section one of the act entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, as amended by the act of March second, nineteen hundred and one, entitled "An act to amend an act entitled 'An act to provide ways and means to meet war expenditures, and for other purposes,' approved June thirteenth, eighteen hundred and ninety-eight, and to reduce taxation thereunder," be, and is hereby, further amended so as to read as follows:

SECTION 1. That there shall be paid on all beer, lager beer, ale, porter, or other similar fermented liquor, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in lieu of the tax now imposed by law, a tax of one dollar for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for any fractional part of a barrel, as authorized and defined by section thirty-three hundred and thirty-nine of the Revised Statutes of the United States: *Provided*, That in lieu of or in addition to the present requirements of law in that respect all stamps used for denoting the tax upon fermented liquors or other taxes may, in the discretion of the Commissioner of Internal Revenue, be canceled by perforations to be made in such manner and form as the Commissioner may, by regulations, prescribe." * * *

SEC. 11. That this act, except as otherwise specially provided for in the preceding section, shall take effect July first, nineteen hundred and two.

Acts imposing tax on fermented liquors and rates of tax.

	Per barrel.
From September, 1862, to March 3, 1863 (act July 1, 1862).	\$1.00
From March 3, 1863, to March 31, 1864 (act March 3, 1863).	.60
From April 1, 1864, to June 13, 1898.	1.00
From June 14, 1898, to June 30, 1901.	2.00
From July 1, 1901, to June 30, 1902.	1.60
From July 1, 1902.	1.00

The act of March 3, 1863, provided that the tax on fermented liquors should be 60 cents per barrel from the date of the passage of that act to April 1, 1864. Hence the tax of 60 cents per barrel having expired by limitation April 1, 1864, the tax of \$1 per barrel under act of July 1, 1862, was again revived, which rate was increased to \$2 under act of June 13, 1898.

The act of July 13, 1866 (14 Stat., 98), changed the mode of assessing and collecting the tax on fermented liquors, and made the tax on them after September 1, 1866, payable by stamps.

Hop beer. (T. D. 20233, 1898.)

Weiss beer taxable. (Special No. 153; 29 Int. Rev. Rec., 313.)

Imported malt liquors. (Sec. 11, act of Mar. 1, 1879, p. 227.)

The manufacturer of a drink called "Maltina," similar to beer, lager beer, ale, and porter, made in part from one of those liquors and in part from another substance, is liable as a brewer. (Davis *v.* Daugherty, 105 Fed. Rep., 769.)

A liquor made from barley malt, fermented by means of a wine yeast, is a fermented malt liquor, for the manufacture of which for sale the special tax of a brewer is required to be paid, and on which tax is imposed, notwithstanding the fact that by the use of a wine yeast instead of a beer yeast it has the appearance and taste of wine. (T. D. 19025, 1898.)

Gallon defined. [SEC. 3339a.] *Section 21, act of March 1, 1879 (20 Stat., 327). That the word "gallon," wherever used in the internal-revenue law, relating to beer, lager-beer, ale, porter, and other similar fermented liquors, shall be held and taken to mean a wine-gallon, the liquid measure containing two hundred and thirty-one cubic inches.*

The standard gallon of the United States contains 231 cubic inches or 8.3389 pounds avoirdupois of distilled water at its maximum density and with the barometer at 30 inches. (Webster's Dictionary.)

The old beer gallon of 282 cubic inches was recognized as the standard for domestic malt liquors before the act of March 1, 1879. That act was passed to make the gallon conform to the standard in the customs service and to that recognized by the mercantile community. (16 Op. Atty. Gen., 361; Nichols *v.* Beard, 29 Int. Rev. Rec., 46.)

Evading tax, SEC. 3340 [*as amended by sec. 10, act of Mar. 1, 1879 making or procuring false entries, etc.; pen-* (20 Stat., 327).] Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented liquors, who evades, or attempts to evade, the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do, or cause to be done, any of the things by law required to be done by him * * *, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall forfeit, for every such offense, all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same,

and be liable to a penalty of not less than five hundred nor more than one thousand dollars, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor, and be imprisoned for a term not exceeding one year.

And every brewer who neglects to keep books, or refuses to furnish the account and duplicate thereof provided by law, or refuses to permit the proper officer to examine the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of three hundred dollars.

The words "as aforesaid²" were stricken out in the seventh line by section 10, act March 1, 1879 (20 Stat., 327).

Brewer liable for neglecting to keep books, although there was no criminal intent. (*United States v. Miller*, 16 Int. Rev. Rec., 25; *United States v. Foster*, 19 ibid., 5; 25 Fed. Cas., 1173; 2 Biss., 453; *United States v. Bellingerstein*, Fed. Cas. No. 14566; 16 Int. Rev. Rec., 92; *Archbold's Crim. Prac.*, p. 395.)

Evading or attempting to evade the tax forfeits all the liquors made, and all the vessels, utensils, and apparatus used in making the same. (*United States v. Brewery Utensils*, 13 Int. Rev. Rec., 95; Fed. Cas. No. 14641.)

SEC. 3341 [as amended by sec. 9, act of July 24, 1897 (30 Stat., 151).] The Commissioner of Internal Revenue shall cause to be prepared, for the payment of such tax, suitable stamps denoting the amount of tax required to be paid on the hogsheads, barrels, and halves, thirds, quarters, sixths, and eighths of a barrel of such fermented liquors (and shall also cause to be prepared suitable permits for the purpose hereinafter mentioned), and shall furnish the same to the collectors of internal revenue, who shall each be required to keep on hand at all times a sufficient supply of permits and a supply of stamps equal in amount to two months' sales thereof, if there be any brewery or brewery warehouse in his district; and such stamps shall be sold, and permits granted and delivered by such collectors, only to the brewers of their district, respectively.

Such collectors shall keep an account of the number of permits delivered and of the number and value of the stamps sold by them to each brewer.

As to stamps, see section 3446, amended, p. 355.

Relative to sale to sheriff of stamps for tax on beer levied upon or attached by him. (Letter to Collector Johnson, Feb. 15, 1894; 40 Int. Rev. Rec., 53.)

Under the act of July 24, 1897, a brewer was required to pay the full face value of the stamps purchased, without deduction of the $\frac{1}{2}$ per cent discount previously allowed. The act of June 13, 1898, increasing the tax to \$2 per barrel, restored the right to the discount. The right to the discount was repealed by the act of March 2, 1901 (31 Stat., 938). (*Nunn v. Wm. Gerst Brewing Co.* (1900), 99 Fed. Rep., 939; *Nassau Brewing Co. v. Moore, collector* (1899), 97 Fed. Rep., 206.)

A collector's duty, as prescribed by section 3341, Revised Statutes, is to keep on hand stamps equal in amount to two months' sale thereof. The law does not permit transactions for future delivery. The agency is limited to the stock on hand. (*The American Brewing Co. v. United States* (1898), 33 Ct. Cls., 348; T. D. 19248, 1898.)

Penalty for not
keeping books,
etc.

Stamps, how
supplied and
sold.

Permits.

Stamps, how procured, affixed, and canceled.

SEC. 3342 [as amended by act of Mar. 3, 1875 (18 Stat., 484).] That every brewer shall obtain, from the collector of the district in which his brewery or brewery-warehouse is situated, and not otherwise unless such collector shall fail to furnish the same upon application to him, the proper stamps, and shall affix, upon the spigot-hole in the head of every hogshead, barrel, keg, or other receptacle in which any fermented liquor is contained, when sold or removed from such brewery or warehouse, (except in case of removal under permit, as hereinafter provided,) a stamp denoting the amount of the tax required upon such fermented liquor, which stamp shall be destroyed by driving through the same the faucet through which the liquor is to be withdrawn, or an air-faucet of equal size, at the time the vessel is tapped, in case the vessel is tapped through the other spigot-hole, (of which there shall be but two, one in the head and one in the side,) and shall, also, at the time of affixing such stamp, cancel the same by writing or imprinting thereon the name of the person, firm, or corporation by whom such liquor was made, or the initial letters thereof, and the date when canceled.

Penalty for fraud or neglect.

Every brewer who refuses or neglects to affix and cancel the stamps required by law in the manner aforesaid, or who affixes a false or fraudulent stamp thereto, or knowingly permits the same to be done, shall pay a penalty of one hundred dollars for each barrel or package on which such omission or fraud occurs, and be imprisoned not more than one year.

Beer stamps are not articles of merchandise. They are merely evidence of payment of tax. (*American Brewing Co. v. United States*, 33 Ct. Cls., 349; *Nunn v. Wm. Gerst Brewing Co.*, 99 Fed. Rep., 939; *Nassau Brewing Co. v. Moore, collector*, 97 Fed. Rep., 206.)

Stamps must be affixed upon a spigot hole in the head of the package. (*United States v. McKechnie*, 15 Int. Rev. Rec., 8; *Fed. Cas. No. 15682.*)

The proviso in the first section of the act of March 2, 1901, p. 247, reads as follows:

"Provided, That in lieu of or in addition to the present requirements of law in that respect, all stamps used for denoting the tax upon fermented liquors or other taxes may, in the discretion of the Commissioner of Internal Revenue, be canceled by perforations to be made in such manner and form as the Commissioner may by regulations prescribe."

In the exercise of the authority thus conferred it was prescribed that on and after September 1, 1901, and until otherwise ordered, all stamps used for denoting the tax upon fermented liquors shall be canceled by perforations. (Reg. No. 6, Rev., p. 13.)

As to spigot holes. (32 Int. Rev. Rec., 317; see T. D. 743, T. D. 751, and T. D. 762.)

Where the law prescribes as punishment for an offense both a money penalty and imprisonment, it is not true that the penalty can only be enforced by indictment. The Government can maintain an action of debt for the money penalty. (*United States v. Foster*, 2 Biss., 453; 19 Int. Rev. Rec., 5.)

It is sufficient as a general rule to charge an offense in the language of the statute. (*United States v. Schimer*, 5 Biss., 195.)

SEC. 3343. Whenever any brewer, cartman, agent for transportation, or other person, sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase, of any fermented liquor contained in any hogshead, barrel, keg, or other vessel from any brewery or brewery warehouse, upon which the stamp, or permit, in case of removal, required by law, has not been affixed, or on which a false or fraudulent stamp, or permit, in case of removal, is affixed, with knowledge that it is such, or on which a stamp, or permit, in case of removal, once canceled, is used a second time, he shall be fined one hundred dollars and imprisoned for not more than one year.

SEC. 3344. Whenever any retail dealer, or other person, withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel containing the same, without destroying or defacing the stamp affixed thereon, or withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel, upon which the proper stamp has not been affixed or on which a false or fraudulent stamp is affixed, he shall be fined one hundred dollars and imprisoned not more than one year.

See section 3455, page 360, as to selling, receiving, etc., empty stamped packages.

SEC. 3345. Any brewer may remove or transport, or cause to be removed or transported, from his brewery or other place of manufacture to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, in another part of the same collection-district, or in another collection-district, but to no other place, malt liquor of his own manufacture, known as lager-beer, in quantities of not less than six barrels in one vessel, and malt liquor of his own manufacture, known as ale or porter, or any other malt liquor of his own manufacture not heretofore mentioned, in quantities not less than fifty barrels at a time, without affixing the proper stamps on said vessels of lager-beer, ale, porter, or other malt liquor, at the brewery or place of manufacture, under a permit, which shall be granted, upon application, by the collector of the district in which said malt liquor is manufactured, and under such regulations as the Commissioner of Internal Revenue may prescribe; and thereafter the manufacturer of said malt liquor shall stamp the same, when it leaves such depot or warehouse, in the same manner and under the same penalties and liabilities as when stamped at the brewery as herein provided.

And the collector of the district in which such depot or warehouse is situated shall furnish the manufacturer with the stamps for stamping the same, as if the said malt liquor had been manufactured in his district. And said permit must be affixed to every such vessel or cask so removed, and canceled or destroyed in such manner as

Selling, removing, or buying
fermented liquor
in packages without stamp, or
false stamp, or
with twice-used
stamp; penalty.

Drawing fer-
mented liquor
from package
without stamp,
or with false
stamp, or with-
out defacing
stamp; penalty.

Removal for
storage without
stamps.

Permit.

the Commissioner of Internal Revenue may prescribe, and under the same penalties and liabilities as provided herein as to stamps.

Making, selling, or using false stamps, permits, Stat., 327]. SEC. 3346 [as amended by sec. 5, act of Mar. 1, 1879 (20 or dies.

false or counterfeit stamp or permit, or die for printing or making stamps or permits, which is in imitation of or purports to be a lawful stamp, permit, or die of the kind before mentioned in this chapter, or who procures the

Removing, re-using stamps, selling or having in possession removed stamps; penalty. same to be done, and every person who shall remove, or cause to be removed, from any cask or package of fermented liquors, any stamp denoting the tax thereon, with intent to re-use such stamp, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp removed from another cask or package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for fermented liquors, shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years.

All officers are instructed that canceled beer stamps, or stamps that have been once used, found in the hands of a brewer or other person, should be seized, marked for identification, and deposited with the collector for use in a prosecution to be instituted under section 3346, R. S., as amended. (Cir. No. 407, Aug. 25, 1893.)

Sour malt liquors removable in peculiar packages without stamps. SEC. 3347. When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell the same for manufacturing purposes, and may remove the same to places where it may be used for such purposes, in casks, or other vessels, unlike those ordinarily used for fermented liquors, containing respectively not less than one barrel each, and having the nature of their contents marked upon them, without affixing thereon the permit, stamp or stamps required.

Section 3347, Revised Statutes, providing for the sale by a brewer of sour beer in peculiar packages without a stamp does not confer the privilege of removing a stamp for re-use in the case of beer soured or spoiled after being stamped. *A stamp once applied to a package can never legally be removed and applied to another.*

No refund allowed of money paid for stamps on packages of beer which have soured after removal from the brewery. (T. D. 799.)

Brewers selling at retail at brewery to affix stamps and keep account. SEC. 3348. Every brewer who sells fermented liquor at retail at the brewery or other place where the same is made, shall affix and cancel the proper stamps upon the hogsheads, barrels, kegs, or other vessels in which the same is contained, and shall keep an account of the quantity so sold by him, and of the number and size of the hogsheads, barrels, kegs, or other vessels in which the same has been contained, and shall make a report thereof, verified by oath, monthly to the collector.

SEC. 3349. Every brewer shall, by branding, mark or cause to be marked upon every hogshead, barrel, keg, or other vessel containing the fermented liquor made by him, before it is sold or removed from the brewery or brewery warehouse, or other place of manufacture, the name of the person, firm, or corporation by whom such liquor was manufactured, and the place of manufacture; and every person other than the owner thereof, or his agent authorized so to do, who intentionally removes or defaces such marks therefrom, shall be liable to a penalty of fifty dollars for each cask or other vessel from which the mark is so removed or defaced:

Provided, That when a brewer purchases fermented liquor finished and ready for sale from another brewer, in order to supply the customers of such purchaser, the purchaser may, upon written notice to the collector of his intention so to do, and under such regulations as the Commissioner of Internal Revenue may prescribe, furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled, as aforesaid, by the manufacturer before removal.

See section 3244, subdivision fifth, page 139, for liability to special tax in such cases.

Shipping fermented liquors under other than the name as known to the trade. (Sec. 3449, R. S.)

SEC. 3350. Whenever, in the opinion of the collector of any district, it becomes requisite or proper, by reason of an accident to any brewery therein, by fire or flood, or of such brewery undergoing repairs, or of other circumstances, that the brewer carrying on the same shall be permitted to conduct his business wholly or in part at some other place within such district or an adjoining district for a temporary period, it shall be lawful for such collector, under such regulations and subject to such limitation of time as the Commissioner of Internal Revenue may prescribe, to issue a permit to such brewer, authorizing him to conduct his business wholly or in part, according to the circumstances, at such other place, for a period to be stated in such permit; and such brewer shall not be required to pay another special tax for the purpose.

SEC. 3351. When malt liquor or tun liquor, in the first stages of fermentation, known as unfermented worts, of whatever kind, is sold by one brewer to another for the purpose of producing fermentation or enlivening old or stale ale, porter, lager-beer, or other fermented liquors, it shall not be liable to a tax to be paid by the seller thereof, but the tax on the same shall be paid by the purchaser thereof, when the same, having been mixed with the old or stale beer, is sold by him as provided by law, and such sale or transfer shall be subject to such restrictions and regulations as the Commissioner of Internal Revenue may prescribe.

Name of manufacturer, etc., to be marked on packages: penalty for removing marks, etc.

Brewer purchasing fermented liquor from another brewer.

Permit to carry on business at another place on account of accident.

Unfermented worts sold to other brewers: how tax shall be paid.

Possession of fermenting liquor after removal from warehouse when tax not paid cause of forfeiture.

SEC. 3352. The ownership or possession by any person upon which the tax required has not been paid, shall render such liquor liable to seizure wherever found, and to forfeiture, removal under said permits excepted.

Absence of stamps to be noticed and evidenced.

And the absence of the proper stamps from any hogshead, barrel, keg, or other vessel containing fermented liquor, after its sale or removal from the brewery where it was made, or warehouse as aforesaid, shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof.

Removal or defacement of stamps by others than the owners:

SEC. 3353. Every person, other than the purchaser or owner of any fermented liquor, or person acting on his behalf, or as his agent, who intentionally removes or defaces the stamp or permit affixed upon the hogshead, barrel, keg, or other vessel, in which the same is contained, shall be liable to a fine of fifty dollars for each such vessel from which the stamp or permit is so removed or defaced, and to render compensation to such purchaser or owner for all damages sustained by him therefrom.

Withdrawal of liquor from un-stamped pack-Stat., 169). Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel or bottling on brewery premises upon which the proper stamp has not been affixed, for

the purpose of bottling the same, or who carries on, or attempts to carry on, the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of five hundred dollars, and the property used in such bottling or business shall be liable to forfeiture:

Penalty.

Removal of fermented liquor to bottling establishment by pipe line or conduit.

Provided, however, That this section shall not be construed to prevent the withdrawal and transfer of fermented liquors from any of the vats in any brewery, by way of a pipe line or other conduit, to another building or place, for the sole purpose of bottling the same; such pipe line or conduit to be constructed and operated in such manner, and with such cisterns, vats, tanks, valves, cocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue, at the expense of the United States:

Provided further, That the tax imposed in section thirty-three hundred and thirty-nine of the Revised Statutes of the United States shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and

Cancellation and defacement of stamps.

defacement, by the collector of the district, or his deputy, in the presence of the brewer, of the number of stamps denoting

the tax on the fermented liquor thus removed. The stamps thus cancelled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same.

Penalties and
forfeitures.

Storing of bottled beer and empty bottles is part of the business of bottling and not allowed on brewery premises.

Beer intended for bottling, except when removed by pipe line, must be drawn into stamped packages and removed from the brewery, and the bottling premises must be so separated from the brewery that the beer must be carried upon a street or road which is a public highway, actually and commonly used as a thoroughfare by the public, in its passage from the brewery to the bottling establishment. (Int. Rev. Reg., No. 6, revised, under "Bottling.")

Concerning the transfer of fermented liquors from a brewery by way of pipe line or conduit for the sole purpose of bottling the same. (Regulations, No. 6, revised, Oct. 8, 1909.)

EXPORTATION OF FERMENTED LIQUORS.

[*Act of June 18, 1890 (26 Stat., 162).]* That from and after the first day of January, eighteen hundred and ninety-one, fermented liquor may be removed from the place of manufacture, or storage, for export to a foreign country, without payment of tax, in such packages and under such regulations, and upon the giving of such notices, entries, bonds, and other security, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; and no drawback of tax shall be allowed on fermented liquor exported on and after the first day of January, eighteen hundred and ninety-one, unless entered for exportation prior to such date.

Exportation of
fermented liqu-
ors.

No drawback.

This operates as a repeal, on and after January 1, 1891, of section 3441, Revised Statutes, as amended. (Regulations No. 29, T. D. 540.)

CHAPTER SIX.

TOBACCO AND SNUFF.

Sec.

69. Act of August 28, 1894. Manufacturer of tobacco defined.
27. Act of October 1, 1890, amended. Restrictions upon farmers removed.
3355 (amended). Manufacturer's statement. Bond and certificate; penalties.
3356. Sign to be put up by manufacturer; penalty for omission.
3357 (amended). Record of manufacturers to be kept by collector.
3358. Annual inventory. Books and monthly abstracts. Taxes on cigars, cigarettes, and size of packages of tobacco; penalty.
3244 (amended). Subsection 6. Dealers in leaf tobacco defined.
26. Act of Oct. 1, 1890. Registry.
3359. Dealers in leaf tobacco to render statement of sales when demanded. Examination of books.
3360 (amended). Books of dealer in leaf tobacco; penalty.
3361. Repealed by section 69, act August 28, 1894.
35. Act Aug. 5, 1909. Retail dealers in leaf tobacco; definition, etc.
3362 (amended). Tobacco and snuff, how put up.
3363. Tobacco and snuff to be sold only in prescribed packages; penalty. Exception.
3364 (amended). Caution label; penalty.
3365. Obsolete.
3366. Purchasing tobacco not branded or stamped; penalty.
3367. Obsolete.
3368 (as amended). Tax on tobacco and snuff.
3369. Stamps, how prepared, furnished, and sold.
Stamping forfeited tobacco or tobacco sold under restraint.
Destruction of unsalable tobacco and cigars.

Sec.

3370. Tobacco manufactured by one person for another or on shares; fraud in such cases; penalty.
3371 (amended). Assessment of tax on tobacco, snuff, and cigars removed without stamps.
3372. Removing unlawfully, selling without stamps, or payment of tax, or giving bond, making false entries; forfeiture.
3373. Absence of stamp evidence of non-payment; forfeiture.
3374. Removing, except in proper packages or without stamp, selling unlawfully, etc.; penalty.
3375. Affixing false stamps or stamps before used; penalty.
3376. Stamps on empty packages to be destroyed; buying, selling, or using the same; penalty.
3377 (amended). Imported tobacco and snuff; also scraps, cuttings, and clippings.
3378. Obsolete.
3379. Obsolete.
3380. Obsolete.
3244 (amended). Subsection 11. Peddlers of tobacco, defined.
3381. Peddlers of tobacco; statement and bond.
3382. Peddlers of tobacco traveling with wagon.
3383 (amended). Peddler to obtain and exhibit certificate, etc.
3384 (amended). Peddling tobacco unlawfully; penalty.
3385 (amended). Exportation of manufactured tobacco, etc.; penalty for relanding, etc.
[3385a.] Transportation bond, etc.; export bond, etc.
[3385b.] Regulations authorized.
[3385c.] Reimported tobacco.
3386 (amended). Drawback on exported tobacco, snuff, and cigars.
[3386a.] Fraudulent claims for drawback.

SEC. 69. [Act of Aug. 28, 1894 (28 Stat., 509).] Every person whose business it is to manufacture tobacco or fine tobacco, snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or

leaf-tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of handling tobacco, or by the working or preparation of leaf tobacco, tobacco stems, scraps, clippings, or waste, by sifting, twisting, screening, or any other process, shall be regarded as a manufacturer of tobacco.

Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hogshead, case, or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or duly registered manufacturers of tobacco, snuff or cigars, or to persons who purchase in packages for export; and all tobacco so sold by such persons shall be regarded as manufactured tobacco, and such manufactured tobacco shall be put up and prepared by such manufacturer in such packages only as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe: *Provided*, That farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco; and so much of section three thousand two hundred and forty-four of the Revised Statutes of the United States, and acts amendatory thereof, as are in conflict with this Act, are hereby repealed:

* * * * *

That section thirty-three hundred and sixty-one of the Revised Statutes is hereby repealed.

See also section 35, Act of August 5, 1909, page 261.

SEC. 27. [*Act of Oct. 1, 1890 (26 Stat., 618), as amended by sec. 69, act of Aug. 28, 1894 (28 Stat., 509).*] That all provisions of the statutes imposing restrictions of any kind whatsoever upon farmers and growers of tobacco in regard to the sale of their leaf tobacco, and the keeping of books, and the registration and report of their sales of leaf tobacco, or imposing any tax on account of such sales are hereby repealed.

See also section 35, Act of August 5, 1909, page 261.

SEC. 3355, [*as amended by sec. 14, act of Mar. 1, 1879 (20 Stat., 327).*] Every person, before commencing, or, if he has already commenced, before continuing, the manufacture of tobacco or snuff, shall furnish, without previous demand therefor, to the collector of the district where the manufacture is to be carried on, a statement in duplicate, subscribed under oath, setting forth the place, and if in a city, the street and number of the street, where the manufacture is to be carried on; the number of cutting-machines, presses, snuff-mills, hand-mills, or other machines; the name, kind, and quality of the article manufactured or proposed to be manufac-

Retail leaf dealers when regarded as manufacturers.

Farmers and growers.

Restrictions upon farmers removed.

Manufacturer's statement, bond, and certificates.

Statement Form 36.

tured; and when the same is manufactured by him as agent for any other person, or to be sold and delivered to any other person under a special contract, the name and residence and business or occupation of the person for whom the said article is to be manufactured, or to whom it is to be delivered; and he shall give a bond, to be approved by the collector of the district, in the sum of not less than two thousand nor more than twenty thousand dollars, to be fixed by the collector of the district, according to the quantum of business proposed to be done by the manufacturer, with right of appeal by the manufacturer to the Commissioner of Internal Revenue in respect to the amount of said bond, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the government of any tax on his manufactures; that he shall render truly and completely all the returns statements, and inventories prescribed by law or regulations: that whenever he adds to the number of cutting-machines, presses, snuff-mills, hand-mills, or other mills or machines as aforesaid, he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all tobacco and snuff manufactured by him before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any manufactured tobacco or snuff which has not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of tobacco or snuff. Additional sureties may be required by the collector from time to time.

Certificate
Form 41. And every manufacturer shall obtain a certificate from the collector of the district, who is hereby directed to issue the same, setting forth the kind and number of machines, presses, snuff mills, hand mills, or other mills and machines as aforesaid; which certificate shall be posted in a conspicuous place within the manufactory.

Penalties.

And every tobacco-manufacturer who neglects or refuses to obtain such certificate, or to keep the same posted as hereinbefore provided, shall be fined not less than one hundred dollars nor more than five hundred dollars. And every person who manufactures tobacco or snuff of any description without first giving bond, as herein required, shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than one nor more than five years.

The liability of the sureties on the bond of a manufacturer of tobacco, given in pursuance of this section, does not cease upon the expiration of his "license" as such manufacturer.

Revenue officers are not required to give notice of the expiration of a manufacturer's "license." It is a matter within his knowledge, and of which he must take notice at his peril. (*United States v. Truesdell*, 2 Bond, 78; 5 Int. Rev. Rec., 102.)

The manufacture and sale at retail of cigars and tobacco can not be lawfully carried on at the same time and at the same place. (16 Op. Atty. Gen., 89; 24 Int. Rev. Rec., 227.)

Use of abbreviation "Co." for "Company" does not invalidate a bond, and a bond so signed is legally binding upon principals and sureties. (T. D. 1660.)

SEC. 3356. Every manufacturer of tobacco and snuff shall place and keep on the side or end of the building wherein his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. And every person who neglects to comply with the requirements of this section shall be fined not less than one hundred dollars or more than five hundred dollars.

Sign must be in English language (Regulations No. 8, p. 36.)

SEC. 3357 [as amended by sec. 33, act of Oct. 1, 1890 (26 Stat., 620)]. Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns; and he shall cause the several manufactories of tobacco or snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner of Internal Revenue.

SEC. 3358. Every person now or hereafter engaged in the manufacture of tobacco or snuff shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, and verified by his own oath, of the quantity of each of the different kinds of tobacco, snuff-flour, snuff, stems, scraps, clippings, waste, tin foil, licorice, sugar, gum, and other materials held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first of January; setting forth what portions of said goods and materials, and what kinds were manufactured and produced by him, and what was purchased from others. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory, and shall verify the fact of such examination by oath, to be indorsed on or affixed to the inventory.

And every such person shall keep a book or books, the forms of which shall be prescribed by the Commissioner of Internal Revenue, and enter therein daily an accurate account of all the articles aforesaid purchased by him, the quantity of tobacco, snuff, and snuff-flour, stems, scraps,

Sign to be put up by manufacturer; penalty for omission.

Record of manufacturers of tobacco and snuff to be kept by collector

Record 13.

Annual inventory of manufacturer.

Form 70a.

Books. Form
No. 74.

clippings, waste, tin-foil, licorice, sugar, gum, and other material, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture in bond, and to what district removed; also the number of net pounds of lumps of plug tobacco made in the lump room, and the number of packages and pounds thereof produced in the press-room each day. And he shall, on or before the tenth day of each month, furnish to the collector a true and complete abstract from such book, verifying the same by his oath, of all such purchases, sales, and removals made during the month next preceding.

Monthly abstracts. Form No. 62.

Penalty.

And whenever any such person refuses or willfully neglects to deliver the inventory, or keep the account, or furnish the abstract aforesaid, he shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Case involving the forfeiture of the tobacco factory of C. H. Lilienthal, before Judge Blatchford and a jury. (U. S. district court, southern district of New York; 13 Int. Rev. Rec., 158.)

Returns of manufacturers of tobacco and cigars: A manufacturer may employ, under power of attorney, a person to prepare his returns, inventories, etc., but the returns and inventories must be verified by the oath of the manufacturer. (T. D. 1039, T. D. 1047.)

Annual inventories. (Cir. 709, rev.; T. D. 1557.)

Dealers in leaf tobacco defined. Sec. 3244, sixth subsection of as amended by sec. 14, act of Mar. 1, 1879 (20 Stat., 327), and act of Mar. 3, 1883 (22 Stat., 488). * * * Every person shall be regarded as a dealer in leaf tobacco whose business it is, for himself or on commission, to sell, or offer for sale, or consign for sale on commission, leaf tobacco.

Restriction of sales by dealers in leaf tobacco. Dealers in leaf tobacco shall sell only to other dealers and to manufacturers of tobacco, snuff, or cigars, and to such persons as are known to be purchasers of leaf tobacco for export:

Provided, It shall be lawful for any licensed manufacturer of cigars to purchase leaf tobacco of any licensed dealer or other licensed manufacturer in quantities less than the original package, for use in his own manufactory exclusively.

Special-tax provision repealed by section 26, act of October 1, 1890.

Special tax again imposed by act of June 13, 1898. (p. 140. Compilation of 1900.)

Again repealed by act of Apr. 12, 1902, sec. 7 (32 Stat., 97).

Requirement as to registry. SEC. 26 [act of Oct. 1, 1890 (26 Stat., 567), (Supp. R. S., vol. 1, 862)]. * * * Every such dealer in leaf tobacco, * * * manufacturer and peddler shall, however, register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on, the same as though the tax had not been repealed, and a failure to

register as herein required shall subject such person to a penalty of fifty dollars.

Penalty for failure to register (T. D. 854, T. D. 1612).

SEC. 3359. It shall be the duty of any dealer in leaf tobacco, or in any material used in manufacturing tobacco or snuff, on demand of any officer of internal revenue, to render a true and complete statement, under oath, of the quantity and amount of such leaf-tobacco or materials sold or delivered to any person named in such demand, and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers, in the manner provided in relation to frauds and evasions.

Dealers in leaf tobacco to render statement of sales when demanded.

Examination of persons, books, and papers.

Sections 3163a, page 75, and 3173, page 86.

SEC. 3360 [*as amended by sec. 1/4, Act of Mar. 1, 1879 (20 Stat., 327.)*] Every dealer in leaf-tobacco shall make daily entries in two books kept for that purpose, one book to be furnished by the government, under such regulations as the Commissioner of Internal Revenue shall prescribe, of the number of hogsheads, cases, and pounds of leaf-tobacco purchased or received by him on assignment, consignment, transfer, or otherwise, and of whom purchased or received, and the number of hogsheads, cases, or pounds sold by him, with the name and residence, in each instance, of the person to whom sold, and, if shipped, to whom shipped, and to what district; one of these books shall be kept at his place of business, and shall be open at all hours to the inspection of any internal-revenue officer or agent, and the other shall, at the end of each and every year, and upon the discontinuance of business of any leaf dealer during any year, be handed over to the collector of his district for the use of the government. And every dealer in leaf-tobacco who willfully neglects or refuses to keep the books herein provided for, and in the manner which shall be prescribed by the Commissioner of Internal Revenue, or to transfer to the collector of his district, as herein provided, the duplicate copy containing his daily transactions, as aforesaid, shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not more than one year.

Leaf-tobacco dealers' books.

Record No. 59.

Penalty.

[Sec. 3361] repealed. See page 257.

SEC. 35. [*Act of Aug. 5, 1909, 36 Stat., 110.*] That unstemmed leaf tobacco in the natural leaf, in the hand, and not manufactured or altered in any manner, raised and grown in the United States, shall not be subject to any internal-revenue tax or charge of any kind whatsoever, and it shall be lawful for any person to buy and sell such unstemmed tobacco in the leaf, in the hand, without payment of tax of any kind: *Provided*, That any person, other than the farmer or producer of leaf tobacco, who

Unstemmed tobacco in the leaf.

sells leaf tobacco to manufacturers of tobacco, snuff or cigars shall be deemed and considered a dealer in leaf tobacco, and become subject to all the provisions of section thirty-two hundred and forty-four, as amended by section fourteen, Act of March first, eighteen hundred and seventy-nine, and also as amended by the Act of March third, eighteen hundred and eighty-three, and, further, shall be subject to all the provisions of section thirty-three hundred and sixty, as amended by section fourteen, Act of March first, eighteen hundred and seventy-nine, and of sections thirty-three hundred and fifty-nine and thirty-three hundred and ninety-one, United States Revised Statutes.

Retail dealer in leaf tobacco defined.

Every person shall be regarded as a retail dealer in leaf tobacco whose business it is to sell leaf tobacco in quantities of less than an original hogshead, case or bale; or who shall sell directly to consumers or to persons other than dealers in leaf tobacco or to manufacturers of tobacco, snuff or cigars, or to persons who purchase in original packages for export.

Registry.

Every such retail dealer in leaf tobacco shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on; and a failure to register as herein required shall subject such person to a penalty of fifty dollars; and every retail dealer in leaf tobacco shall also keep a book and enter therein daily his purchases of leaf tobacco and his sales, where such sales amount to two pounds or more to one person in one day. Such record shall be kept written up to date and shall be in such form and contain such entries as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and such books shall be open at all times for the inspection of any internal-revenue officer or agent.

Books.

To whom may sell.

Any person who has duly qualified as a retail dealer in leaf tobacco may sell natural leaf tobacco grown or raised in the United States in its condition as cured on the farm, in the hand, and not manufactured in any way, except to manufacturers of tobacco, snuff or cigars, without the payment of any tax on such leaf tobacco whatsoever, and so much of section sixty-nine, tariff Act of August twenty-seventh, eighteen hundred and ninety-four, which took effect the following day, and section thirty-two hundred and forty-four, United States Revised Statutes, or any other existing law, as is inconsistent with the provisions of this Act, is hereby repealed.

Record No. 145.

And it shall be the duty of every retail dealer in leaf tobacco, as herein described, under regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to furnish on demand to any internal-revenue officer or other authorized agent of the Treasury Department a true and correct statement, verified by his oath or affirmation, of

all his sales of leaf tobacco in quantities of ten pounds or more to any one person in any one day, with the name and residence in each instance of the person to whom sold, and any such retail dealer in leaf tobacco who shall willfully refuse to furnish such information or keep the book as required herein, or who shall knowingly make any false statements or false entries in such book as to any of the facts aforesaid, shall be guilty of a misdemeanor, and on conviction shall be liable to a fine of fifty dollars for each offense: *And provided further*, That nothing in this Act shall be construed as imposing any restrictions whatsoever upon the farmers or growers of leaf tobacco in regard to the sales of their leaf tobacco.

Penalty.
Sales by farm-
ers.

SEC. 34. [*Act of Aug. 5, 1909 (36 Stat., 110).*] That the provisions of sections thirty, thirty-one, thirty-two, and thirty-three of this Act shall not take effect until July first, nineteen hundred and ten.

Relates to sections 3362, 3368, 3392, and 3394, amended by Act of August 5, 1909.

SEC. 3362 [*as amended by sec. 30 of the Act of Aug. 5, 1909 (36 Stat., 108).*] All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description and in no other manner:

All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-half ounce, three-fourths of an ounce, and further packages with a difference between each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and packages of six ounces, seven ounces, eight ounces, ten ounces, twelve ounces, fourteen ounces, and sixteen ounces: *Pro-
vided*, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

Packages desig-
nated.

All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight.

Proviso.
Snuff.

And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the tobacco in each package: *Provided*, That these limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported: *And provided further*, That perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer

Wooden pack-
ages for plug, etc.

Marking.

Provisos.
Exports except-
ed.

Sales of perique,
etc., in bulk free
of tax.

Composition of packages.

directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe: *And provided further*, That wood, metal, paper, or other materials may be used separately or in combination for packing tobacco, snuff, and cigars, under such regulations as the Commissioner of Internal Revenue may establish.

Congress may prescribe any rule or regulation which is not in itself unreasonable, relative to the manufacture and handling of tobacco or cigars. (*Felsenheld v. U. S.* (1902), 186 U. S., 126, affirming 103 Fed. Rep., 453.)

Tobacco and snuff must be put up by the manufacturer in prescribed packages. (*U. S. v. 288 Packages of Merry World Tobacco*, 103 Fed. Rep., 453.)

Section 3362 was amended by section 14, act of March 1, 1879 (20 Stat., 327), and act of January 9, 1883 (22 Stat., 401), section 3, act of June 13, 1898 (30 Stat., 449), act of July 1, 1902, and section 30, act of August 5, 1909 (36 Stat., 108).

SEC. 3363 [*as amended by sec. 31, act of Oct. 1, 1890 (26 Stat., 567).*] No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers

from the packages authorized by section thirty-three hundred and sixty-two of the Revised Statutes; and every person who sells or offers for sale any snuff or any kind of manufactured tobacco not so put up in packages and stamped shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

Tobacco and snuff to be sold only in prescribed packages; penalty; exception.

U. S. v. Jenkinson, 15 Fed. Rep., 903.

Caution label.

SEC. 3364 [*as amended by sec. 5, act of Mar. 3, 1883 (22 Stat., 488).*] Every manufacturer of tobacco or snuff shall, in addition to all other requirements of this title relating to tobacco, print on each package, or securely affix, by pasting, on each package containing tobacco or snuff manufactured by or for him, a label, on which shall be printed * * * the number of the manufactory, the district and State in which it is situated, and these words:

NOTICE.—The manufacturer of this tobacco has complied with all requirements of law. Every person is cautioned, under the penalties of law, not to use this package for tobacco again.

Penalty.

Every manufacturer of tobacco who neglects to print on or affix such label to any package containing tobacco made by or for him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense shall be committed.

[**SEC. 3365.**] Obsolete.

Purchasing tobacco not branded or stamped; penalty.

SEC. 3366. Every person who purchases, or receives for sale, any manufactured tobacco or snuff which has not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each offense.

SEC. 3367. (Buying tobacco from a manufacturer who has not paid special tax.)

Obsolete, as manufacturers are not now required to pay special tax.

SEC. 3368 [as amended by sec. 31, act of Aug. 5, 1909 (36 Stat., 109).] Upon tobacco and snuff manufactured and sold, or removed for consumption or use, there shall be levied and collected the following taxes:

On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of eight cents per pound. And snuff flour, when sold, or removed for use or consumption, shall be taxed as snuff, and shall be put up in packages and stamped in the same manner as snuff.

On all chewing and smoking tobacco, fine-cut, cavendish, plug, or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of eight cents per pound.

This is an excise tax, and Congress has the power to increase it, at least while the property is held for sale, and before it has passed into the hands of the consumer. (*Patton v. Brady*, 184 U. S., 608; additional tax of 3 cents per pound on tobacco in the hands of dealers imposed by sec. 3, act of June 13, 1898).

Section 3368 was amended by section 30, act of October 1, 1890 (26 Stat., 619); section 3, act of June 13, 1898 (30 Stat., 448); section 3, act of March 2, 1901 (31 Stat., 939); section 3, act of April 12, 1902, and section 31, act of August 5, 1909 (36 Stat., 109), in effect July 1, 1910.

Date of acts imposing tax on tobacco and rates of tax.

Tobacco.	Rate of tax per pound.	Acts imposing tax.	Acts repealing tax.	Length of time rates were in force.
Smoking, made exclusively of stems....	Cents.			Months.
Do.....	2	July 1, 1862	Mar. 3, 1863	6
Smoking, prepared with all the stems in....	5	Mar. 3, 1863	June 30, 1864	16
Cavendish, plug, twist, fine-cut, valued at not over 30 cents per pound.....	5	July 1, 1862	....do.....	22
Cavendish, plug, twist, fine-cut, valued at over 30 cents per pound.....	10	....do.....	Mar. 3, 1863	6
Cavendish, plug, twist, fine-cut, and manufactured tobacco of all descriptions, except smoking tobacco.....	15	....do.....	....do.....	6
Snuff.....	15	Mar. 3, 1863	June 30, 1864	16
Smoking, made exclusively of stems....	20	July 1, 1862	....do.....	22
Smoking, prepared with all the stems in, and fine-cut shorts.....	15	June 30, 1864	July 13, 1866	25
Cavendish, plug, twist, etc., and fine-cut chewing.....	25	....do.....	Mar. 3, 1865	9
Snuff.....	35	....do.....	....do.....	9
Twisted by hand.....	35	....do.....	....do.....	9
	30	Mar. 3, 1865	July 13, 1866	16

Date of acts imposing tax on tobacco and rates of tax—Continued.

Tobacco.	Rate of tax per pound.	Cents.	Acts imposing tax.	Length of time rates were in force.
Smoking, of all kinds, not otherwise provided for.....	35	Mar. 3, 1865	July 13, 1866	16
Cavendish, plug, twist, etc., and fine-cut chewing.....	40	.....do.....	.....do.....	16
Snuff.....	40	.....do.....	July 20, 1868	40
Smoking, not sweetened, stemmed, or butted.....	15	July 13, 1866	.....do.....	24
Twisted by hand, etc., and fine-cut shorts.....	30	.....do.....	.....do.....	24
Smoking, sweetened, stemmed, or butted.....	40	.....do.....	.....do.....	24
Chewing.....	40	.....do.....	.....do.....	24
Chewing, etc., smoking, etc., part of the stems removed.....	32	July 20, 1868	June 6, 1872	47
Smoking, exclusively of stems, etc.....	16	.....do.....	.....do.....	47
Snuff.....	32	.....do.....	Mar. 1, 1879	129
All kinds, except snuff, cigars, cheroots, and cigarettes.....	20	June 6, 1872	Mar. 3, 1875	32
Do.....	24	Mar. 3, 1875	Mar. 1, 1879	50
Do.....	16	Mar. 1, 1879	Mar. 3, 1883	48
Do.....	8	Mar. 3, 1883	Oct. 1, 1890	91
Smoking and manufactured tobacco and snuff.....	6	Oct. 1, 1890	June 13, 1898	90
Manufactured tobacco and snuff.....	12	June 13, 1898	Apr. 12, 1902	49
Do.....	6	Apr. 12, 1902	Aug. 5, 1909	96
Do.....	8	Aug. 5, 1909	.....	.....

The acts relating to the tax on manufactured tobacco and snuff went into operation immediately on their passage, except the following: Act of March 3, 1865, took effect April 1, 1865; act of July 13, 1866, took effect August 1, 1866; act of June 6, 1872, took effect July 1, 1872; act of March 1, 1879, took effect May 1, 1879; act of March 3, 1883, took effect May 1, 1883 (Rep. Com. Int. Rev., 1888, p. 136); act of October 1, 1890, took effect January 1, 1891; act of June 13, 1898, took effect June 14, 1898; act of March 2, 1901, which took effect July 1, 1901, allowed 20 per cent discount on all sales of tobacco and snuff stamps, virtually making rate 9.6 cents; act of April 12, 1902, took effect July 1, 1902; and act of August 5, 1909, took effect July 1, 1910.

The tax on manufactured tobacco and snuff first required to be paid by stamps. (Act of July 20, 1868.)

Stamps not of money value were required to be affixed by inspectors previous to that time. (Act of Mar. 3, 1865.)

The term "granulated tobacco" not synonymous with "snuff." (Venable v. Richards, 105 U. S., 636; 28 Int. Rev. Rec., 162; affirming 1 Hughes, 326; 22 Int. Rev. Rec., 299.)

Tobacco stamped and removed in forenoon of March 3, 1875, while the act of that date which increased the tax to 24 cents per pound was signed in the afternoon. The increase of tax did not apply in that case. (Burgess v. Salmon, 97 U. S., 381; 25 Int. Rev. Rec., 31; affirming 1 Hughes, 356; 21 Int. Rev. Rec., 333.)

Manufactured tobacco shipped in bond from the manufactory and stored in an export bonded warehouse on the 14th of June, 1872, was subject to the tax of 32 cents per pound prescribed by the internal-revenue act of July 20, 1868. (Jones v. Blackwell, 100 U. S., 599; 26 Int. Rev. Rec., 114; 14 Op. Atty. Gen., 110; 16 Int. Rev. Rec., 77.)

Section 4 of "An act to repeal war revenue taxation, and for other purposes," approved April 12, 1902, provided for rebate of tax on tobacco held by manufacturers or dealers on which the

higher rate had been paid. (*Hyams v. United States*, 139 Fed. Rep., 997; 146 ibid., 15.)

The rules and regulations prescribed by the Commissioner were authorized and were not unreasonable. (*Powell v. United States* (1905), 135 Fed., 881.)

SEC. 3369. The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps for the payment of the tax on tobacco and snuff, which shall indicate the weight and class of the article on which payment is to be made, and shall be affixed and canceled in the mode prescribed by the Commissioner of Internal Revenue, and stamps when used on any wooden package shall be canceled by sinking a portion of the same into the wood with a steel die, and also such export-stamps as are required by law. Such stamps shall be furnished to the collectors requiring them, and each collector shall keep at all times a supply equal in amount to three months' sale thereof, and shall sell the same only to the manufacturers of tobacco and snuff in their respective districts who have given bonds as required by law, and to owners or consignees of tobacco or snuff, upon the requisition of the proper custom-house officer having the custody of such tobacco or snuff; and to persons required by law to affix the same to tobacco or snuff on hand on the first day of January, eighteen hundred and sixty-nine. And every collector shall keep an account of the number, amount, and denominative values of stamps sold by him to each manufacturer or other person aforesaid:

Provided, That such stamps as may be required to stamp tobacco, snuff, or cigars, sold under distraint by any collector of internal revenue, or for stamping any tobacco, snuff, or cigars which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp account with the Department:

And provided further, That in case it shall appear that any abandoned, condemned, or forfeited tobacco, snuff, or cigars, when offered for sale, will not bring a price equal to the tax due and payable thereon, such goods shall not be sold for consumption in the United States; and upon application made to the Commissioner of Internal Revenue, he is authorized and directed to order the destruction of such tobacco, snuff, or cigars by the officer in whose custody and control the same may be at the

stamps, how prepared, furnished, and sold.

Record No. 98.

Stamping for
feited tobacco,
snuff, or cigars.

Destruction of
unsalable to-
bacco and cigars.

time, and in such manner and under such regulations as the Commissioner of Internal Revenue may prescribe.

As to power to establish, alter, or change stamps, etc., see sections 3445 and 3446 as amended, pages 354, 355.

As to stamps on tobacco sold on distraint, etc., section 3458, page 362.

Tobacco used as samples must be stamped. (23 Int. Rev. Rec., 29.)

As to the issue of duplicate stamps for restamping packages of tobacco from which the stamps have been lost or destroyed by accident. (See sec. 3315, R. S., p. 209.)

The term "tax," as used in the last proviso of section 3369, is not intended to include import duties; and cigarettes, when forfeited, may be sold and delivered when they bring enough to pay the internal-revenue tax, although they may not bring enough to pay that and the customs duties. (*United States v. 59 Demijohns Aguadiente and Four Barrels of Cigarettes.* (1889.) 39 Fed. Rep., 401.) See Department Circular, No. 34, February 18, 1898. T. D., 1898.)

Tobacco manufactured by one person for another, or on shares; stamps affixed by whom in such cases.

SEC. 3370. Whenever tobacco or snuff of any description is manufactured, in whole or in part, upon commission or shares, or the material from which any such articles are made, or are to be made, is furnished by one person and made and manufactured by another, or the material is furnished or sold by one person with an understanding or agreement with another that the manufactured article is to be received in payment therefor or for any part thereof, the stamps required by law shall be affixed by the actual maker or manufacturer before the article passes from the place of making or manufacturing. And in case of fraud on the part of either of said persons in respect to said manufacture, or of any collusion on their part with intent to defraud the revenue, such material and manufactured articles shall be forfeited to the United States; and each party to such fraud or collusion shall be deemed guilty of a misdemeanor, and be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned for not less than six months nor more than three years.

Penalty.

Assessment of tax on tobacco, snuff, and cigars removed without stamps.

SEC. 3371 [as amended by sec. 14, act of Mar. 1, 1879 (20 Stat., 327).] Whenever any manufacturer of tobacco, snuff, or cigars, sells, or removes for sale or consumption, any tobacco, snuff, or cigars, upon which a tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor, and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal: *Provided, however,* That no such assessment shall be made until and after notice to the manufacturer of the alleged sale and removal to show cause against said assessment; and the Commissioner of Internal Revenue shall, upon a full hearing of all the

evidence, determine what assessment, if any, should be made.

It is estimated that 25 pounds of leaf tobacco will make 1,000 cigars. (Regulations, No. 8, Rev., p. 58.)

Authority of Commissioner under the provisions of sections 3371 and 3396 to examine returns of cigar manufacturers and to treat deficiency in product based on the return of 1,000 cigars for every 25 pounds of tobacco as *prima facie* evidence of non-payment of taxes. (United States *v.* Appel and Katencamp, 22 Int. Rev. Rec., 169.)

SEC. 3372. Every manufacturer of tobacco or snuff who removes, otherwise than as provided by law, or sells, without the proper stamps denoting the tax thereon, or without having paid the special tax or given bond as required by law, any tobacco or snuff, or who makes false and fraudulent entries of manufactures or sales of tobacco or snuff, or makes false or fraudulent entries of the purchase or sales of leaf-tobacco, tobacco stems, or other material, or who affixes any false, forged, fraudulent, spurious, or counterfeit stamp, or imitation of any stamp, required by law, or any stamp required by law which has been previously used, to any box or package containing any tobacco or snuff, shall in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

The tobacco is forfeited for fraud of the manufacturer in the possession of an innocent purchaser. (U. S. *v.* 800 Caddies of Tobacco, 2 Bond, 305, Fed. Cas. No. 15036.)

Raw material intended for fraudulent manufacture may be seized for forfeiture wherever found. (United States *v.* 16 Hogsheads Tobacco, 2 Bond, 137, Fed. Cas. No. 16302.)

SEC. 3373. The absence of the proper stamp on any package of manufactured tobacco or snuff shall be notice to all persons that the tax has not been paid thereon, and shall be *prima facie* evidence of the non-payment thereof. And such tobacco or snuff shall be forfeited to the United States.

United States *v.* Keyes (10 Fed. Rep., 876).

U. S. *v.* 117 Packages of Plug Tobacco (10 Ben., 343, Fed. Cas. No. 15936).

Quantity of Tobacco (5 Ben., 407, 20 Fed. Cas. No. 11500.)

SEC. 3374. Every person who removes from any manufactory, or from any place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount of tax thereon being affixed and canceled, as required by law; or, if the same be intended for export, without the proper export stamp being affixed; or who uses, sells, or offers for sale, or has in possession, except in the manufactory, or while in transfer under bond or a collector's permit, from any manufactory, store, or ware-

Removing unlawfully, selling without stamps, or payment of tax, or giving bond, making false entries, etc.

Forfeiture.

Absence of stamp to be evidence of nonpayment.

Forfeiture.

Removing, except in proper packages, or without stamp; selling unlawfully, etc.

house, to a vessel for exportation to a foreign country, any manufactured tobacco or snuff, without proper stamps for the amount of tax thereon being affixed and canceled; or who sells, or offers for sale, for consumption in the United States, or uses, or has in possession, except in the manufactory, or while in transfer under bond or a collector's permit, from any manufactory, store, or warehouse, to a vessel for exportation to a foreign country, any manufactured tobacco or snuff on which only the stamp marking the same for export has been affixed, shall for each such offense, respectively, be fined not less than one thousand dollars nor more than five thousand dollars, and be **imprisoned not less than six months nor more than two years.**

Affixing false stamps or stamps before used.

SEC. 3375. Every person who **affixes to any package containing tobacco or snuff any false, forged, fraudulent, spurious, or counterfeit stamp, or a stamp which has been before used,** shall be deemed guilty of a felony, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than two years nor more than five years.

Stamps on emp-tied packages to be de-stroyed; buying, selling, or using same.

SEC. 3376. Whenever any stamped box, bag, vessel, wrapper, or envelope of any kind, containing tobacco or snuff, is emptied, the stamp or stamps thereon shall be destroyed by the person in whose hands the same may be. And every person who willfully neglects or refuses so to do shall, for each such offense, be fined fifty dollars, and imprisoned not less than ten days nor more than six months. And every person who sells or gives away, or who buys or accepts from another any such empty stamped box, bag, vessel, wrapper, or envelope of any kind, or the stamp or stamps taken from any such empty box, bag, vessel, wrapper, or envelope of any kind, shall, for each such offense, be fined one hundred dollars, and imprisoned for not less than twenty days and not more than one year. And every manufacturer or other person who puts tobacco or snuff into any such box, bag, vessel, wrapper, or envelope, the same having been either emptied, or partially emptied, or who has in his possession, or affixes to any box or other package, any stamp which has been previously used, or who sells, or offers for sale, any box or other package of tobacco, snuff, or cigars, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp that has been previously used, or sells from any such fraudulently stamped box or package, or has in his possession any box or package as aforesaid, knowing the same to be fraudulently stamped, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, and **imprisoned for not less than one year nor more than three years.**

See section 3455, p. 360.

Imported tobacco and snuff to SEC. 3377 [as amended by sec. 14, act of Mar. 1, 1879 (20 Stat., 327).] All manufactured tobacco and snuff (not in-

cluding cigars) imported from foreign countries, shall, in addition to the import duties imposed on the same, pay the tax imposed by law on like kinds of tobacco and snuff manufactured in the United States, and have the same stamps respectively affixed. Such stamps shall be affixed and canceled on all such articles so imported by the owner or importer thereof, while they are in the custody of the proper custom-house officers, and such articles shall not pass out of the custody of said officers until the stamps have been affixed and canceled. Such tobacco and snuff shall be put up in packages, as prescribed by law for like articles manufactured in the United States before the stamps are affixed; and the owner or importer shall be liable to all the penal provisions prescribed for manufacturers of tobacco and snuff manufactured in the United States. Whenever it is necessary to take any such articles, so imported, to any place for the purpose of repacking, affixing, and canceling such stamps, other than the public stores of the United States, the collector of customs of the port where they are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officers as he may direct. And every officer of customs who permits any such articles to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years:

Provided, That scraps, cuttings, and clippings of tobacco imported from any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal-revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Imported
scraps, cuttings,
and clippings of
tobacco.

SEC. 3378. (*Obsolete*). *Tobacco deemed as having been manufactured after July twentieth, eighteen hundred and sixty-eight.*

SEC. 3379. (*Obsolete*). *Relates to tobacco, snuff, and cigars manufactured between July 20, 1868, and November 28, 1883.*

SEC. 3380. (*Obsolete*). *Selling tobacco falsely represented to be made and tax paid before July 20, 1868.*

SEC. 3244 (*as amended. Eleventh sub-section*). Any person who sells or offers to sell and deliver manufactured tobacco, snuff, or cigars, traveling from place to place, in the town or through the country, shall be regarded as a peddler of tobacco.

Peddlers of tobacco defined.

Under existing law peddlers of tobacco are not required to pay special tax.

- Peddlers of tobacco. SEC. 3381 [*as amended by sec. 28, act of Oct. 1, 1890 (26 Stat., 618)*]. Every peddler of tobacco, before commencing, or, if he has already commenced, before continuing to peddle tobacco, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city, the street and number of the street where he resides, the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. He shall also give a bond in the sum of five hundred dollars, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, or cigars; that he shall neither sell nor offer for sale any tobacco, snuff, or cigars, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, and cigars as bear the manufacturer's label or caution notice, and his legal marks and brands, and genuine internal-revenue stamps which have never before been used.
- Statement. Form 95. Bond. Form 111. Peddlers of tobacco traveling with wagon. Peddler to obtain and exhibit certificate, etc. Forfeiture. Penalty.
- SEC. 3382. Every peddler of tobacco, snuff, or cigars, traveling with a wagon, shall affix and keep on the same, in a conspicuous place, a sign painted in oil-colors, or gilded, giving his full name, business, and collection district.
- SEC. 3383 [*as amended by sec. 29, act of Oct. 1, 1890 (26 Stat., 618)*]. Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is hereby authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate. And whenever any peddler refuses to exhibit his certificate, as aforesaid, on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs may, on ten days' notice, published in any newspaper in the district, or served personally on the peddler, or at his dwelling-house, require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal-revenue laws relating to forfeitures. Any internal revenue agent may demand production of and inspect the collector's certificate for peddlers, and refusal or failure to produce the same, when so demanded, shall subject the party guilty thereof to a fine

of not more than five hundred dollars and to imprisonment not more than twelve months.

SEC. 3384 [as amended by sec. 15, act of Mar. 1, 1879 (20 Stat., 346)]. Every person who is found peddling tobacco, snuff, or cigars, without having given the bond, or without having previously obtained the collector's certificate as herein provided, or who sells tobacco, snuff, or cigars otherwise than in original and full packages as put up by the manufacturer; or who has in his possession any internal-revenue stamp which has been removed from any box or other package of tobacco, snuff, or cigars, or any empty or partially emptied box or other package which has been used for tobacco, snuff, or cigars, the stamp or stamps on which have not been destroyed; or who fails to have affixed to his wagon, in a conspicuous place, a sign, painted in oil colors, or gilded, giving his full name, business, and collection district, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than one year, or both, at the discretion of the court. *And any collector or deputy collector finding such peddler in the act of offending as to either of the offenses mentioned in this section, may seize the horse or horses, mule or mules, wagon and contents, or pack, bundle, or basket, of any such person; and the collector shall thereupon proceed upon such seizure as provided in section thirty-three hundred and eighty-three.*

SEC. 3385 [as amended by act of June 9, 1880 (21 Stat., 167), amended and re-enacted by act of Aug. 8, 1882 (22 Stat., 372), and amended by act of Jan. 13, 1883 (22 Stat., 402)].

Manufactured tobacco, snuff, and cigars intended for immediate exportation may, after being properly inspected, marked, and branded, be removed from the manufactory in bond without having affixed thereto the stamps indicating the payment of the tax thereon. The removal of such tobacco, snuff, and cigars from the manufactory shall be made under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. There shall be affixed to each package of tobacco, snuff, and cigars intended for immediate export, before it is removed from the manufactory, an engraved stamp indicative of such intention. Such stamp shall be provided and furnished to the several collectors as in the case of other stamps, and they shall account for the use of the same. When the manufacturer has made the proper entries, filed the bonds, and otherwise complied with the requirements of law and the regulations as herein provided, the collector shall issue to him a permit for the

Peddling to
business unlaw-
fully; penalty.

Exportation of
manufactured to-
bacco, etc.

Export stamps

removal, accurately describing the tobacco, snuff, and cigars, to be shipped, the number and kinds of packages, the number of pounds, the marks and brands, the State and collection district from which the same are shipped, the number of the manufactory and the manufacturer's name, the port from which the said tobacco, snuff, and cigars are to be exported, and the route or routes over which the same are to be sent to the port of shipment. Upon the presentation to the collector of internal revenue of a detailed report from the inspectors of customs, and a certificate of the collector of customs at the port from which the goods are to be exported that the goods removed from the manufactory under bond and described in the permit of the collector of internal revenue have been received by the said collector of customs, and that the said goods were duly laden on board of a foreign-bound vessel, naming the vessel, and that the said merchandise was entered on the outward manifest of said vessel, and that the said vessel and cargo were duly cleared from said port, and on the payment of the tax or deficiency, if any, the bonds, which have been given or shall hereafter be required to be given under the provisions of

Cancellation of this section shall be canceled. But when the goods are bonds.
Act of Jan. 13, 1883, exported to an adjacent foreign territory, by vessel or otherwise, said bonds shall be canceled upon such proofs of exportation as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Every person who, with the intent to defraud the revenue laws of the United States, relands or causes to be relanded within the jurisdiction of the United States any manufactured tobacco, snuff, or cigars which have been shipped for exportation under the provisions of this act, without properly entering such tobacco, snuff, or cigars at the custom-house, and paying the proper customs and internal revenue tax thereon, or who receives such relanded tobacco, snuff, or cigars, and every person who aids or abets in such relanding or receiving such tobacco, snuff or cigars, shall, on conviction, be fined not exceeding five thousand dollars, or imprisoned not more than three years, and all tobacco, snuff, or cigars so relanded shall be forfeited to the United States.

Penalty for re-lending tobacco shipped for export.

The only substantial change from the amended section made by the act of August 8, 1882, was striking out the following words relating to the export stamp: "And for the expense attending the providing and affixing thereof ten cents for each package so stamped shall be paid to the collector on making the entry for such transportation."

The exportation stamp required to be affixed to packages of tobacco intended for exportation declared constitutional. (*Pace v. Burgess*, 92 U. S., 372; 22 Int. Rev. Rec., 145.) Decision affirmed. (*Turpin v. Burgess*, 117 U. S., 504; 32 Int. Rev. Rec., 119.)

Persons proposing to manufacture tobacco and cigars exclusively for export required to qualify both as manufacturers of tobacco and as cigar manufacturers. Tobacco, cigars, and ciga-

lettes manufactured exclusively for export may be packed in such quantity and in such kind of packages as desired. (T. D., 19124, 1898.)

(See on this section *United States v. Allen*, 39 Fed. Rep., 100; *Ryan v. United States*, 19 Wall., 514.)

[SEC. 3385a.] [Sec. 24, act of Feb. 8, 1875 (18 Stat., 307).]

That whenever any manufacturer of tobacco shall desire to withdraw the same from his factory for exportation under existing laws, such manufacturer may, at his option, in lieu of executing an export bond, as now provided by law, give a transportation bond, with sureties satisfactory to the collector of internal revenue, and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein; and in such case, on arrival of the tobacco at the port of export, the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth his intention to export the same, the name of the vessel upon which the same is to be laden, and the port to which it is intended to be exported. He shall, after the quantity and description of tobacco have been verified by the inspector, file with the collector of the port an export entry verified by affidavit. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the tobacco as specified in said entry, to the port designated in said entry, or to some other port without the jurisdiction of the United States. And upon the lading of such tobacco, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said tobacco was withdrawn for exportation, a clearance certificate and a detailed report of the inspector; which report shall show the quantity and description of manufactured tobacco, and the marks thereof. Upon the receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond.

The bonds required to be given for the landing at a foreign port of such manufactured tobacco shall be canceled upon the presentation of satisfactory proof and certificates that said tobacco has been landed at the port of destination named in the bill of lading, or any other port without the jurisdiction of the United States, or upon satisfactory proof that after shipment the same was lost at sea without fault or neglect of the owner or exporter thereof.

As bonds given under section 3385, as amended, are canceled on proof of clearance of the articles therein named for a foreign country, exporters do not now avail themselves of the provisions of this section.

On withdrawal
of tobacco for ex-
portation, trans-
portation bond
may be taken.

Notice to col-
lector of port.

Export entry.
Export bond.

Clearance cer-
tificate and in-
spector's report.

Cancellation of
transportation
bond.

Cancellation of
export bond.

Regulations authorized. [SEC. 3385b.] [Sec. 1, act of Aug. 4, 1886 (24 Stat., 218).]

That manufactured tobacco, snuff, and cigars may be removed for export to a foreign country without payment of tax, under such regulations, and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

Regulations No. 29 revised (1909).

Section 23 of the act of August 5, 1909, relative to the manufacture of articles from materials subject to internal-revenue tax in bonded warehouses under Treasury Regulations for exportation without tax being paid, page 333.

Re-imported tobacco to be retained at custom-house until tax is paid and stamps affixed. [SEC. 3385c.] [Sec. 1, paragraph 500, act of Aug. 5, 1909 (36 Stat., 73).] * * * And provided further, That when manufactured tobacco which has been exported without

payment of internal-revenue tax shall be re-imported it shall be retained in the custody of the collector of customs until internal-revenue stamps in payment of the legal duties shall be placed thereon.

See section 26, act of August 5, 1909, page 337.

Drawback on exported tobacco, snuff, and cigars. SEC. 3386 [as amended by sec. 16, act of Mar. 1, 1879 (20 Stat., 327).]. There shall be an allowance of drawback on

tobacco, snuff, and cigars on which the tax has been paid by suitable stamps affixed thereto before removal from the place of manufacture, when the same are exported, equal in amount to the value of the stamps found to have been so affixed; the evidence that the stamps were so affixed, and the amount of tax so paid, and of the subsequent exportation of the said tobacco, snuff, and cigars, to be ascertained under such regulations as shall be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury. Any sums found to be due under the provisions of this section shall be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States out of any money arising from internal duties not otherwise appropriated:

Certificate and bond to be filed. Provided, That no claim for an allowance of drawback shall be entertained or allowed until a certificate from the collector of customs at the port from which the goods have been exported, or other evidence satisfactory to the Commissioner of Internal Revenue, has been furnished, that the stamps affixed to the tobacco, snuff, or cigars entered and cleared for export to a foreign country were totally destroyed before such clearance; nor until the claimant has filed a bond, with good and sufficient sureties, to be approved by the collector of the district from which the goods are shipped, in a penal sum double the amount of the tax for which said claim is made, that he will procure, within a reasonable time, evidence satisfactory to the Commissioner of Internal Revenue that said tobacco, snuff, or cigars have been landed at any port without the jurisdiction of the United States, or that after shipment the same were lost at sea, and have not been relanded within the limits of the United States.

[SEC. 3386a.] [Sec. 25, act of Feb. 8, 1875 (18 Stat., 317).] Fraudulently claiming drawback on manufactured tobacco.

That if any person or persons shall fraudulently claim or seek to obtain an allowance or drawback of duties on any manufactured tobacco, or shall fraudulently claim any greater allowance or drawback thereon than the duty actually paid, such person or persons shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of five hundred dollars, at the election of the Secretary of the Treasury, to be recovered as in other cases of forfeiture provided for in the internal revenue laws.

Punishment.

See also penalty provided by section 3443, page 353.

CHAPTER SEVEN.

CIGARS.

Sec.	Sec.
3244. Subsection 10. Manufacturers of cigars defined.	3397 (amended). Removal without properly boxing, stamping, or branding; using false stamps, etc.; cigars packed for export; penalty.
3387 (amended). Manufacturer's statement, bond, and certificate; cigarettes and cheroots held to be cigars; penalty.	3398. Absence of stamp cause of forfeiture.
3388. Manufacturer's sign.	3399. Cigars manufactured on shares, commission, or contract, how stamped; fraud, penalty.
3389 (amended). Record of manufacturers.	3400. Forfeiture of property for selling etc., contrary to law, using false stamps, etc.
3390. Annual inventory, book, and monthly abstracts of manufacturer; penalty.	3401. (Obsolete.)
3391. Dealers in materials for cigars to make sworn statement; examination of books.	3402. Imported cigars to pay tax.
3392 (amended). How cigars and cigarettes to be put up and stamped; penalty.	3403. Cigars on hand after April 1, 1869. Selling imported cigars not packed and stamped as required by law; penalty.
3393 (amended). Caution notice; penalty.	3404. Purchasing cigars not branded or stamped; penalty.
3394 (amended). Tax on cigars and cigarettes.	3405. (Obsolete.)
3395. Stamps, how prepared, furnished, etc.	3406. Stamps on emptied cigar boxes to be destroyed; penalty. Destruction of emptied stamped cigar boxes; penalty.
3396. Commissioner to prescribe regulations.	

Manufacturers SEC. 3244, [as amended. *Tenth subsection*] * * *

of cigars defined. Every person whose business it is to make or manufacture cigars for himself, or who employs others to make or manufacture cigars, shall be regarded as a manufacturer of cigars. Every person whose business it is to make cigars for others, either for pay upon commission, on shares, or otherwise, from material furnished by others, shall be regarded as a cigar-maker. Every cigar-maker shall cause his name and residence to be registered, without previous demand, with the collector of the district in which such cigar-maker shall be employed; and every manufacturer of cigars employing any cigar-maker who shall have neglected or refused to make such registry shall be fined five dollars for each day that such cigar-maker so offending, by neglect or refusal to register, shall be employed by him.

The provision relative to registry of cigar-makers is virtually obsolete. The other provisions of the law on the same subject were stricken out by section 16, act of March 1, 1879 (20 Stat., 347), amending sections 3387, page 279, and 3389, page 280, and the omission to strike this out was evidently accidental.

Special tax provision repealed by act October 1, 1890.

Special tax again imposed by act June 13, 1898, and repealed by the act of April 12, 1902. (Sec. 5.)

SEC. 3387 [*as amended by sec. 35, act of Oct. 1, 1890 (26 Stat., 620).*] Every person before commencing, or, if he has already commenced, before continuing, the manufacture of cigars, shall furnish, without previous demand therefor, to the collector of the district a statement in duplicate, under oath, setting forth the place, and, if in a city, the street and number of the street, where the manufacture is to be carried on; and when the same are to be manufactured for, or to be sold and delivered to, any other person, the name and residence and business or occupation of the person for whom they are to be manufactured, or to whom they are to be delivered; and shall give a bond, in conformity with the provisions of this Title, in such penal sum as the collector may require, not less than [one] hundred dollars, and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector, or under the instructions of the Commissioner of Internal Revenue. Said bond shall be conditioned that * * * he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render correctly all the returns, statements, and inventories prescribed; that whenever he shall add to the number of cigar-makers employed by him he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all cigars manufactured by him before he offers the same or any part thereof for sale, and before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any cigars which have not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of cigars. Every cigar-manufacturer shall obtain from the collector of the district, who is hereby required to issue the same, a certificate setting forth the number of cigar-makers for which the bond has been given, and shall keep the same posted in a conspicuous place within the manufactory; and every cigar-manufacturer who neglects or refuses to obtain such certificate, or to keep the same posted as hereinbefore provided, shall be fined one hundred dollars.

And every person who manufactures cigars of any description, without first giving bond as herein required, shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than five years.

Cigarettes and cheroots shall be held to be cigars under the meaning of this chapter.

The place of manufacture should be kept separate and apart from the place of sale. (*U. S. v. Neid*, 13 Int. Rev. Rec., 28; *Fed. Cas. No. 15, 860.*)

A manufacturer of tobacco or cigars can not sell at retail at place of manufacture. (*Ludloff v. United States*, 108 U. S., 176; 29 Int. Rev. Rec., 125; 16 Op. Atty. Gen., 89; 24 Int. Rev. Rec., 227.)

Manufacturer's statement and bond.

Statement.
Form No. 362.

Bond. Form
71.

Certificate.
Form No. 412.

Penalty.

Cigarettes and
cheroots held to
be cigars.

A manufacturer can not retail cigars in his cigar factory. (Crisp v. Proud, 24 Int. Rev. Rec., 340; 4 Hughes 57, Fed. Cas. No. 3392.)

Where cigar manufacturers desire to voluntarily file a new bond, such bonds, if approved by the collector, should be accepted, and the manufacturers' accounts closed under the old bond. Sureties on old bond released when a new bond is given. (T. D. 740.)

Bond of minor son of deceased manufacturer. (T. D. 792.)

Administrator must obtain consent of sureties to continue under bond of deceased. (T. D. 926.)

Consent of sureties necessary before factory can be enlarged or changed. (T. D. 964.)

Manufacturer's sign. SEC. 3388. Every cigar-manufacturer shall place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. Any person neglecting to comply with the requirements of this section shall on conviction, be fined not less than one hundred dollars nor more than five hundred dollars.

Sign must be in English language. (Regulations No. 8, p. 48.)

Record of manufacturers of cigars to be kept by collector. SEC. 3389 [*as amended by sec. 34, art of Oct. 1, 1890 (26 Stat., 620).*] Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of

only the proper officers of internal-revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of cigars in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer an abstract of his inventory and monthly returns; and he shall cause the several manufacturers of cigars in the district to be numbered consecutively, which number shall not thereafter be changed.

Annual inventory, book entries, and monthly abstracts of manufacturer. SEC. 3390. Every person now or hereafter engaged in the manufacture of cigars shall make and deliver to the collector of the district a true inventory, in such form as

may be prescribed by the Commissioner of Internal Revenue, of the quantity of leaf tobacco, cigars, stems, scraps, clippings, and waste, and of the number of cigar-boxes and the capacity of each box, held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first of January; setting forth what portion and kinds of said goods were manufactured or produced by him, and what were purchased from others, and shall verify said inventory by his oath indorsed thereon. The collector shall make personal examination of the stock sufficient to

Verification inventory. satisfy himself as to the correctness of the inventory; and shall verify the fact of such examination by oath to be indorsed on the inventory. Every such person shall also enter daily in a book, the form of which shall be prescribed by the Commissioner of Internal Revenue, an accurate account of all the articles aforesaid purchased by him, the

quantity of leaf-tobacco, cigars, stems, or cigar-boxes, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture; and shall, on or before the tenth day of each and every month, furnish to the collector of the district a true and accurate abstract from such book, verified by his oath, of all such purchases, sales, and removals made during the month next preceding. In case of refusal or willful neglect to deliver the inventory or keep the account, or furnish the abstract aforesaid, he shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Form No. 72.

Penalty.

Verification of returns (T. D. 1646). Inventory taken July 1, 1910 (T. D. 1631).

SEC. 3391 It shall be the duty of every dealer in leaf-tobacco or material used in manufacturing cigars, on demand of any officer of internal revenue, to render to such officer a true and correct statement, under oath, of the quantity and amount of such leaf-tobacco or materials sold or delivered to any person named in such demand; and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers in the manner provided in this Title in relation to frauds and evasions.

Dealers in material for cigars to make sworn statement, when demanded.

Examination of books.

See sections 3163a, page 76; 3173, page 86; and 3176, page 89.

SEC. 3392 [as amended by sec. 32, act of Oct. 1, 1890 (26 Stat., 619), and by sec. 32, act of Aug. 5, 1909 (36 Stat., 109)]. All cigars weighing more than three pounds per thousand shall be packed in boxes not before used for that purpose containing, respectively, five, ten, twelve, thirteen, twenty-five, fifty, one hundred, two hundred, two hundred and fifty, or five hundred cigars each; and every person who sells, or offers for sale, or delivers, or offers to deliver, any cigars in any other form than in new boxes as above described, or who packs in any box any cigars in excess of or less than the number provided by law to be put in each box, respectively, or who falsely brands any box, or affixes a stamp on any box denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years: *Provided*, That nothing in this section shall be construed as preventing the sale of cigars at retail by retail dealers from boxes packed, stamped and branded in the manner prescribed by law: *And provided further*, That every manufacturer of cigarettes shall put up all the cigarettes that he manufactures or has manufactured for him and sells or removes for consumption or use, in packages or parcels containing five, eight, ten, fifteen, twenty, fifty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the

Cigars. New boxes required.

Penalty.

Provisos.

Retail sales.

Cigarettes.

Packages required.

Imported cigarettes.

tax thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in like manner, in addition to the import stamp indicating inspection of the custom house before they are withdrawn therefrom.

Cigars shall be put up in boxes properly stamped and branded with the number of the factory and number of the district and the State. (*United States v. 76,125 Cigars*, 18 Fed. Rep., 147; *Jackson v. United States*, 21 Fed. Rep., 35.)

Label and notice on cigars.

SEC. 3393 [as amended by sec. 16, act of Mar. 1, 1879 (20 Stat., 327)]. Every manufacturer of cigars shall securely affix, by pasting on each box containing cigars manufactured by or for him, a label, on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

NOTICE.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again, or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases.

Every manufacturer of cigars who neglects to affix such label to any box containing cigars made by or for him, or sold or offered for sale by or for him, and every person who removes any such label, so affixed, from any such box, shall be fined fifty dollars for each box in respect to which such offense is committed.

Imprinting caution notice on cigar boxes (T. D. 1599).

Rates of tax.

SEC. 3394 [as amended by sec. 33, act of Aug. 5, 1909 (36 Stat., 110).] Upon cigars and cigarettes which shall be manufactured and sold, or removed for consumption or sale, there shall be assessed and collected the following taxes, to be paid by the manufacturer thereof: On cigars of all descriptions made of tobacco or any substitute therefor and weighing more than three pounds per thousand, three dollars per thousand; on cigars, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, seventy-five cents per thousand; on cigarettes, made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, three dollars and sixty cents per thousand; on cigarettes, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, one dollar and twenty-five cents per thousand: *Provided*,

Cigars.

That all rolls of tobacco, or any substitute therefor, wrapped with tobacco, shall be classed as cigars; and all rolls of tobacco, or any substitute therefor, wrapped in paper or any substance other than tobacco, shall be classed as cigarettes.

Provided.
Classification.

And the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide dies and stamps for cigars weighing not more than

Stamps for new
rate of tax.

And the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide dies and stamps for cigars weighing not more than

three pounds per thousand; and for cigarettes at the rates of tax imposed by this section: *Provided*, That such stamps shall be in denominations of five, eight, ten, fifteen, twenty, fifty, and one hundred; and the laws and regulations governing the packing and removal for sale of cigarettes, and the affixing and canceling of the stamps on the packages thereof, shall apply to cigars weighing not more than three pounds per thousand.

No packages of manufactured tobacco, snuff, cigars, or cigarettes, prescribed by law, shall be permitted to have packed in, or attached to, or connected with, them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this paragraph shall subject the offender to the penalties and punishments provided by section thirty-four hundred and fifty-six of the Revised Statutes.

Proviso.
Denominations

Restrictions on
all packages.

Lottery.

Penalty.

Section 3394 was amended by section 2, act of March 3, 1875 (18 Stat., 339); section 4, act of March 3, 1883 (22 Stat., 488); section 10, act of July 24, 1897 (30 Stat., 206); section 3, act of June 13, 1898 (30 Stat., 449); section 3, act of March 2, 1901 (31 Stat., 939); section 3, act of April 12, 1902 (32 Stat., 96); act of July 1, 1902, and section 33, act of August 5, 1909 (36 Stat., 110), taking effect July 1, 1910.

"Jumbo" cigars, or cigars of unusual size, to be classified as manufactured tobacco. The fact that they could be smoked did not altogether determine their character. (*D'Estrinoz v. Gerker*, 43 Fed. Rep., 285.)

Date of acts imposing tax on cigars and cigarettes and rates of tax.

	Rates of tax.	Acts imposing tax.	Acts repealing tax.	Length of time rates were in force.
Cigars valued at not over \$5 per M.....	Per M. \$1.50	July 1, 1862	June 30, 1864	22
Valued at over \$5 and not over \$10 per M.....	2.00	do.....	do.....	22
Valued at over \$10 and not over \$20 per M.....	2.50	do.....	do.....	22
Valued at over \$20 per M.....	3.50	do.....	do.....	22
Cheroots valued at not over \$5 per M.....	3.00	June 30, 1864	Mar. 3, 1865	9
Cigars valued at not over \$5 per M.....	3.00	do.....	do.....	9
Valued at over \$5 and not over \$15 per M.....	8.00	do.....	do.....	9
Valued at over \$15 and not over \$30 per M.....	15.00	do.....	do.....	9
Valued at over \$30 and not over \$45 per M.....	25.00	do.....	do.....	9
Valued at over \$45 per M.....	40.00	do.....	do.....	9
Cigarettes valued at not over \$6 per 100 packages of 25 each.....	1 1.00	do.....	do.....	9
Valued at over \$6 per 100 packages of 25 each.....	1 3.00	do.....	do.....	9
Cigarettes made wholly of tobacco.....	3.00	do.....	do.....	9
Cigars and cheroots made wholly of tobacco or of any substitutes therefor.....	10.00	Mar. 3, 1865	July 13, 1866	16
Cigarettes valued at not over \$5 per 100 packages of 25 each.....	2 .05	do.....	do.....	16
Valued at over \$5 per 100 packages of 25 each.....	3 .05	do.....	do.....	16
Cigarettes made wholly of tobacco or of any substitutes therefor.....	10.00	do.....	do.....	16

¹ Per 100 packages.

² Per package.

³ Per cent.

Date of acts imposing tax on cigars and cigarettes and rates of tax—Continued.

	Rates of tax.	Acts imposing tax.	Acts repealing tax.	Length of time rates were in force.
Cigars, cigarettes, and cheroots valued at \$8 per M or less.	\$2.00	July 13, 1866	Mar. 2, 1867	Months.
Valued at over \$8 and not over \$12 per M.	4.00	.....do.....	.....do.....	7
Valued at over \$12 per M.	14.00	.....do.....	.....do.....	7
Cigars, cigarettes, and cheroots of all descriptions.	5.00	Mar. 2, 1867	July 20, 1868	17
Cigars and cheroots of all descriptions.	5.00	July 20, 1868	Mar. 3, 1875	79
Cigarettes weighing not over 3 pounds per M.	1.50	.....do.....	.....do.....	79
Weighing over 3 pounds per M.	5.00	.....do.....	.....do.....	79
Cigars and cheroots of all descriptions.	6.00	Mar. 3, 1875	Mar. 3, 1883	98
Cigarettes weighing not over 3 pounds per M.	.75	.....do.....	.....do.....	98
Weighing over 3 pounds per M.	6.00	.....do.....	.....do.....	98
Cigars and cheroots of all descriptions.	3.00	Mar. 3, 1883	June 13, 1898	183
Cigarettes weighing not over 3 pounds per M.	.50	.....do.....	July 24, 1897	172
Weighing over 3 pounds per M.	3.00	.....do.....	June 13, 1898	183
Cigars weighing more than 3 pounds per M.	3.00	July 24, 1897	.....do.....	10
Weighing not more than 3 pounds per M.	1.00	.....do.....	Mar. 2, 1901	47
Cigarettes weighing more than 3 pounds per M.	3.00	.....do.....	June 13, 1898	10
Weighing not more than 3 pounds per M.	1.00	.....do.....	.....do.....	10
Cigars weighing more than 3 pounds per M.	3.60	June 13, 1898	Mar. 2, 1901	37
Weighing not more than 3 pounds per M.	1.00	.....do.....	.....do.....	37
Cigarettes weighing more than 3 pounds per M.	3.60	.....do.....	Apr. 12, 1902	49
Weighing not more than 3 pounds per M.	1.50	.....do.....	Mar. 2, 1901	37
Cigars weighing more than 3 pounds per M.	3.00	Mar. 2, 1901	.....do.....	.....
Weighing not more than 3 pounds per M.	.54	.....do.....	Aug. 5, 1909	108
Cigarettes weighing more than 3 pounds per M.	3.00	Apr. 12, 1902	.....do.....	96
Weighing not more than 3 pounds per M. of wholesale value or price of—				
Not over \$2 per M.	.54	Mar. 2, 1901	.....do.....	108
More than \$2 per M.	1.08	.....do.....	.....do.....	108
Cigars weighing more than 3 pounds per M.	3.00	Aug. 5, 1909	.....do.....	.....
Weighing not more than 3 pounds per M.	.75	.....do.....		
Cigarettes weighing more than 3 pounds per M.	3.60	.....do.....		
Weighing not more than 3 pounds per M.	1.25	.....do.....		

¹ And 20 per cent.

The act of July 1, 1862, went into operation September 1, 1862.

The act of July 20, 1868, first required payment of tax on cigars by stamps.

Assessment of tax on cigars removed without stamps. (Sec. 3371, p. 268.)

Authority of commissioner to examine returns of cigar manufacturers and to treat deficiency in product based on the return of one thousand cigars for every 25 pounds of tobacco as prima facie evidence of nonpayment of taxes. (See note under sec. 3371, p. 268.)

Section 3362, amended, provides that fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco may be sold in bulk as material and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions,

rules, and regulations as the Commissioner of Internal Revenue may prescribe. This relates to cigar manufacturers as well as manufacturers of tobacco.

As to reimportation of articles exported in bond or with draw-back (see sec. 26, act Aug. 5, 1909, p. 337.)

Summary of sections of the act of August 5, 1909, effective July 1, 1910. (T. D. 1602.)

Increased rates of taxation under said act. (T. D. 1622; T. D. 1629.)

SEC. 3395. The Commissioner of Internal Revenue shall cause to be prepared, for payment of the tax upon cigars, suitable stamps denoting the tax thereon. Such stamps shall be furnished to collectors requiring them, and collectors shall, if there be any cigar-manufacturers within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to the cigar-manufacturers who have given bonds and paid the special tax, as required by law, in their districts, respectively, and to importers of cigars, who are required to affix the same to imported cigars in the custody of customs officers, and to persons required by law to affix the same to cigars on hand after the first day of April, eighteen hundred and sixty-nine. Every collector shall keep an account of the number, amount, and denominative values of the stamps sold by him to each cigar-manufacturer, and to other persons above described.

See sections 3445 and 3446 as amended (pp. 354, 355,) as to authority to prescribe how stamps shall be attached, canceled, etc.

See, also, section 3369, page 267.

Porto Rico. An act to provide means for the sale of internal-revenue stamps in the island of Porto Rico, approved June 29, 1906. (See p. 374.)

Sale of internal-revenue stamps in the island of Porto Rico, Circular No. 679, dated July 25, 1906 (T. D. 1031).

Sale of stamps to a sheriff or constable. (25 Int. Rev. Rec. 21.)

SEC. 3396. The Commissioner of Internal Revenue may prescribe such regulations for the inspection of cigars, cheroots, and cigarettes, and the collection of the tax thereon, as he may deem most effective for the prevention of frauds in the payment of such tax.

The commissioner has authority to prescribe regulations for the inspection of cigars and the collection of the tax thereon. (*Ludloff v. United States*, 108 U. S., 176.)

SEC. 3397 [*, as amended by sec. 16, act of Mar. 1, 1879 (20 Stat., 327)*]. Whenever any cigars are removed from any manufactory, or place where cigars are made, without being packed in boxes as required by the provisions of this chapter, or without the proper stamp thereon denoting the tax, or without stamping, indenting, burning, or impressing into each box, in a legible and durable manner, the number of the cigars contained therein, the number of the manufactory, and the number of the district and the State, or without properly affixing thereon and canceling the stamp denoting the tax on the same, or are sold, or

Record 47.

Removal without properly boxing, stamping, or branding.

offered for sale, not properly boxed and stamped, they shall be forfeited to the United States. And every person who commits any of the above-described offenses shall be fined for each such offense not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than two years.

Using fraudulent or imitation stamps.

And every person who packs cigars in any box bearing a false or fraudulent or counterfeit stamp, or who affixes to any box containing cigars a stamp in the similitude or likeness of any stamp required to be used by the laws of the United States, whether the same be a customs or internal-revenue stamp, or who buys, receives, or has in his possession any cigars on which the tax to which they are liable has not been paid, or who removes, or causes to be removed, from any box any stamp denoting the tax on cigars, with intent to use the same, or who uses, or permits any other person to use, any stamp so removed, or who receives, buys, sells, gives away, or has in his possession any stamp so removed, or who makes any other fraudulent use of any stamp intended for cigars, or who removes from the place of manufacture any cigars not properly boxed and stamped as required by law, shall be deemed guilty of a felony, and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years.

Penalty.

Cigars packed for export. *Provided*, That cigars packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, shall be exempt from the provisions of this section, and also from the provisions of section thirty-three hundred and ninety-three of the Revised Statutes, requiring a label to be affixed to each box.

See section 3445, page 354, relative to canceling stamps.

Affixing to a box containing domestic cigars a stamp in the similitude of a customs stamp is an indictable offense, and it is not necessary in the indictment to aver an intent to defraud the United States. (*United States v. Jacoby*, 12 Blatchf. 491, Fed. Cas. No. 15462.)

Where a sheriff or constable removes cigars from a cigar factory without the same being properly boxed and stamped, and sells the same unstamped, he is liable to the penalty prescribed. (1899, No. 21167.)

Stamps on boxes of cigars must be properly affixed and canceled to avoid liability to seizure. (T. D. (1899) No. 19063.)

Cigars removed from factory without stamping into each box the number of the manufactory and the number of the district and State; the natural inference is that the cigars were removed from the factory in the condition in which they were found. (*Jackson v. U. S.*, 21 Fed. Rep., 35; 30 Int. Rev. Rec., 279.)

U. S. v. Woolheim, 11 Int. Rev. Rec., 78. Fed. Cas. No. 16761.

Boxes of cigars in the hands of innocent purchasers upon which the number of the factory had not been impressed forfeitable. (*U. S. v. 76, 125 Cigars*, 18 Fed. Rep., 147.)

Absence of stamps evidence of nonpayment of tax.

SEC. 3398. The absence of the proper revenue-stamp on any box of cigars sold, or offered for sale, or kept for sale, shall be notice to all persons that the tax has not

been paid thereon, and shall be prima-facie evidence of the nonpayment thereof, and such cigars shall be forfeited to the United States.

See section 3376, page 270, (T. D. 1296.)

SEC. 3399. Whenever cigars of any description are manufactured, in whole or in part, upon commission or shares, or the material is furnished by one party and manufactured by another, or the material is furnished or sold by one party with an understanding or agreement with another that the cigars are to be received in payment therefor, or for any part thereof, the stamps required by law shall be affixed by the actual maker before the cigars are removed from the place of manufacturing. And in case of fraud on the part of either of said parties in respect to said manufacture, or of any collusion on their part with intent to defraud the revenue, such material and cigars shall be forfeited to the United States; and every person engaged in such fraud or collusion shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned for not less than six months nor more than three years.

SEC. 3400. Every manufacturer of cigars who removes or sells any cigars without payment of the special tax as a cigar manufacturer, or without having given bond as such, or without the proper stamps denoting the tax thereon; or who makes false or fraudulent entries of the manufacture or sale of any cigars; or makes false or fraudulent entries of the purchase or sale of leaf-tobacco, tobacco-stems, or other material used in the manufacture of cigars; or who affixes any false, forged, spurious, fraudulent, or counterfeit stamp, or imitation of any stamp, required by law to any box containing any cigars, shall, in addition to the penalties elsewhere provided in this Title for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco and cigars, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

See sections 3708 Revised Statutes, 5413, page 420, and 5430, Revised Statutes.

Machines used in violation of law, although leased from a third person ignorant of such violation, are subject to forfeiture. The owner is held to have acted with the knowledge that the property would be subject to forfeiture if the business was unlawfully conducted, and to have taken the risk. (U. S. v. 220 Patented Machines, 99 Fed., 559; T. D. 54.)

SEC. 3401. (*Obsolete.*) Falsely representing cigars to have been made prior to July 20, 1868.

SEC. 3402. All cigars imported from foreign countries shall pay, in addition to the import duties imposed thereon, the tax prescribed by law for cigars manufactured in the

Cigars manufactured on shares, commission, or contract, how stamped.

Fraud, penalty.

Forfeiture of property for selling, etc., contrary to law, using false stamps, etc.

United States, and shall have the same stamps affixed. The stamps shall be affixed and canceled by the owner or importer of the cigars while they are in the custody of the proper custom-house officers, and the cigars shall not pass out of the custody of such officers until the stamps have been so affixed and canceled, but shall be put up in boxes containing quantities as prescribed in this chapter for cigars manufactured in the United States, before the stamps are affixed. And the owner or importer of such cigars shall be liable to all the penal provisions of this Title prescribed for manufacturers of cigars manufactured in the United States. Whenever it is necessary to take any cigars so imported to any place other than the public stores of the United States, for the purpose of affixing and canceling such stamps, the collector of customs of the port where such cigars are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as such collector may direct. And every officer of customs who permits any such cigars to pass out of his custody or control, without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Relative to packing and stamping imported cigars:

SEC. 2804, amended act of Aug. 28, 1894, Sec. 26. No cigars shall be imported unless the same are packed in boxes of not more than five hundred cigars in each box; and no entry of any imported cigars shall be allowed of less quantity than three thousand in a single package; and all cigars on importation shall be placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected and a stamp affixed to each box indicating such inspection, and also a serial number to be recorded in the custom house. And the Secretary of the Treasury is hereby authorized to provide the requisite stamps, and to make all necessary regulations for carrying the above provisions of law into effect.

As to imported cigarettes, see section 3392 as amended, page 281.

As to exportation of cigars, see under tobacco, section 3385, page 273.

As to drawback on cigars. (Sec. 3386, p. 276.)

Instructions for stamping domestic cigars reimported. (Regulations No. 8, p. 65.)

Cigars imported from the Philippines are not imported from a foreign country. (24 Op. Atty. Gen., 120.)

Section 3377 as amended provides, "That scraps, cuttings, and clippings of tobacco imported from any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal-revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury."

Cigars on hand
after April 1,
1869.

SEC. 3403. All cigars of every description, on hand after the first day of April, eighteen hundred and sixty-nine, shall be taken to have been either manufactured or imported after the passage of the internal-revenue act of

July twentieth, eighteen hundred and sixty-eight, and shall be stamped accordingly.

Every person who sells or offers for sale any imported cigars, or cigars purporting or claimed to have been imported, not put up in packages and stamped as provided by this chapter, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

SEC. 3404. Every person who purchases or receives for sale any cigars which have not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each such offense.

Dealers, as well as manufacturers, are liable for selling or offering for sale cigars not properly boxed and stamped. (U. S. v. Edwards, 17 Int. Rev. Rec., 126; Fed. Cas. No. 15025; U. S. v. Mena, 29 Int. Rev. Rec., 190.)

SEC. [3405.] Obsolete. Relative to purchasing cigars from manufacturers who have not paid special tax.

SEC. 3406. Whenever any stamped box containing cigars, cheroots, or cigarettes, is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. Any person who willfully neglects or refuses so to do shall, for each such offense, be fined not exceeding fifty dollars and imprisoned not less than ten days nor more than six months. And any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing cigars, cheroots, or cigarettes, any such stamped box, shall for each such offense be fined not exceeding one hundred dollars and be imprisoned not more than one year. Any revenue officer may destroy any emptied cigar-box upon which a cigar-stamp is found.

Section 3315, as amended by section 5, act March 1, 1879, page 209, provides for restamping packages of cigars and cigarettes which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

As to the Philippines (See p. 377).

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CHAPTER EIGHT.

OPIUM.

[Act of Oct. 1, 1890 (26 Stat., 567).]

Sec.

36. Tax on opium manufactured in the United States for smoking purposes, ten dollars per pound.
37. Manufacturer shall file notices, inventories, and bonds, keep books and render returns, put up signs and affix factory number, and conduct his business under such regulations as may be prescribed.
38. Prepared smoking opium imported into the United States to be stamped before removal from custom-house. Opium manufactured in the United States for smoking purposes to be stamped before removal from place of manufacture.

Tax on opium
manufactured
for smoking pur-
poses..

SEC. 36. [Act of Oct. 1, 1890 (26 Stat., 567).] That an internal-revenue tax of ten dollars per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue.

Manufacturer's
notices, invento-
ries, bonds,
books, returns,
and signs.

SEC. 37. That every manufacturer of such opium shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue and in a penal sum of not less than five thousand dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

Penal sum of
bond.

Stamps.

SEC. 38. That all prepared smoking opium imported into the United States shall, before removal from the custom-house, be duly stamped in such manner as to denote that the duty thereon has been paid; and that all opium manufactured in the United States for smoking purposes, before being removed from the place of manufacture, whether for consumption or storage, shall be duly stamped

Sec.

39. Laws relating to stamps in case of manufactured tobacco and snuff to apply to the manufacture of opium for smoking purposes as far as applicable.
40 (as amended). Penalty of not more than one thousand dollars and imprisonment of not more than one year for each and every violation of law. All prepared smoking opium not stamped to be forfeited.

in such permanent manner as to denote the payment of the internal-revenue tax thereon.

SEC. 39. That the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, cancellation, and destruction of stamps relating to tobacco and snuff, as far as applicable are hereby made to apply to stamps provided for by the preceding section.

See sections 3369, page 267; 3218, page 113; 3445 and 3446, page 354, 355.

SEC. 40 [as amended by the act of Mar. 3, 1897 (29 Stat., 228).] That a penalty of not more than one thousand dollars, or imprisonment not more than one year, or both, in the discretion of the court shall be imposed for each and every violation of the preceding sections of this act relating to opium by any person or persons; and all prepared smoking opium wherever found within the United States without stamps required by this act shall be forfeited, and may be sold to the highest bidder, pursuant to the provisions of section thirty-four hundred and sixty, Revised Statutes, if not valued as therein provided at over five hundred dollars; but if valued at more than five hundred dollars the sale shall be made pursuant to the judgment of the court in the proceedings for condemnation or forfeiture.

Penalty.

Pursuant to
provisions of sec.
3460.

Sale.

AN ACT To prohibit the importation and use of opium for other than medicinal purposes,

That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: *Provided*, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.

SEC. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

Approved, February 9, 1909. (35 Stat., 614.)

(T. D. No. 29657, Mar. 27, 1909.)

CHAPTER NINE.

OLEOMARGARINE; ADULTERATED BUTTER; PROCESS OR RENOVATED BUTTER.

[Acts of Aug. 2, 1886 (24 Stat., 209), and Oct. 1, 1890 (26 Stat., 621), as amended by act of May 9, 1902 (32 Stat., 193).]

Sec.	Sec.
1. Act May 9, 1902, imitation dairy products subject to State laws. Act Aug. 2, 1886: 1. Butter defined. 2. Oleomargarine defined. 3. (Amended.) Special taxes. 4. Penalties for nonpayment of special taxes. 5. Manufacturer's notices, books, returns, bonds, signs, etc. 6. Oleomargarine, how to be packed and sold; penalty. 7. Manufacturer's labels, penalty for failing to affix. 8. (Amended.) Tax, stamps, laws relative to stamps for tobacco and snuff made to apply. 9. Assessment of tax on oleomargarine when removed without stamps. 10. Tax on imported oleomargarine; penalty. Warehousing. 11. Penalty for receiving for sale un stamped oleomargarine. 12. Penalty for purchasing from a manufacturer who has not paid special tax; forfeiture. 13. Stamps on empty packages to be destroyed; penalty for failure; dealing in empty stamped packages. 14. Authority to employ chemists and microscopists. Commissioner to decide in contested cases; appeal. 15. Forfeiture of unstamped oleomargarine; penalty for defacing or removing stamps. 16. Oleomargarine removed for export. 17. Carrying on business as manufacturer in fraud of the revenue; penalties and forfeitures.	18. Penalty for omitting things required and for doing things forbidden. 19. Courts in which fines may be recovered. 20. Commissioner to make regulations. 21. Date when act goes into effect; stock on hand. 4. Act of May 9, 1902. Butter defined. Adulterated butter defined. Process or renovated butter defined. Notices, bonds. Inventories, signs. Manufacturers' packages. Dealers' packages. Caution label. Tax on adulterated and process or renovated butter. Stamps—Sections relating to stamps for tobacco and snuff made applicable. Sections of act of August 2, 1886, made applicable to adulterated butter. 5. Act May 9, 1902. Inspection of renovated butter. Marking of process or renovated butter. Secretary of Agriculture to make regulations. 6. Act May 9, 1902, wholesale dealers in oleomargarine, etc., to keep books and render returns. Penalty. 7. Act May 9, 1902, date of taking effect.

(Act of Aug. 2, 1886 (24 Stat., 209), as amended by acts of Oct. 1, 1890 (26 Stat., 621), and May 9, 1902 (32 Stat., 193), an act to make oleomargarine and other imitation dairy products subject to the laws of any State or Territory, or the District of Columbia, into which they are transported, and to change the tax on oleomargarine, and to impose a tax, provide for the inspection, and regulate the manufacture and sale of certain dairy products, and to amend an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved Aug. 2, 1886.)

SEC. 1 [*act of May 9, 1902* (*32 Stat., 193*)]. That all articles known as oleomargarine, butterine, imitation process, renovated, or adulterated butter, or imitation cheese, or any substance in the semblance of butter or cheese not the usual product of the dairy and not made exclusively of pure and unadulterated milk or cream, transported into any State or Territory or the District of Columbia, and remaining therein for use, consumption, sale, or storage therein shall, upon the arrival within the limits of such State or Territory or the District of Columbia, be subject to the operation and effect of the laws of such State or Territory or the District of Columbia, enacted in the exercise of its police powers to the same extent and in the same manner as though such articles or substances had been produced in such State or Territory or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

SEC. 1 [*act. of Aug. 2, 1886* (*24 Stat., 209*)]. That for the purpose of this act the word "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

See section 4, act May 9, 1902, defining "butter," also "Adulterated butter," and "Process or renovated butter," page 300.

SEC. 2 [*act of Aug. 2, 1886* (*24 Stat., 209*)]. That for the purposes of this act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances heretofore known as oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter.

Interpretation of definition. (18 Op. Atty. Gen. 489; 32 Int. Rev. Rec., 333.)

Addition of foreign fat, lard, or oil to butter produces oleomargarine. (33 Int. Rev. Rec., 397; Regulations No. 9, pp. 24, 88.)

Taxability of mixtures or compounds of animal or vegetable oils or fats. (T. D. 1354, May 12, 1908.)

SEC. 3 [*act of Aug. 2, 1886*], as amended by section 2 of the act of May 9, 1902, imposing special taxes on manufacturers and dealers will be found under chapter 3, "Special taxes," section 3242b, page 131.

SEC. 4 [*act of Aug. 2, 1886* (*24 Stat., 209*)]. That every person who carries on the business of a manufacturer of oleomargarine without having paid the special tax there-

Imitation dairy products subject to State laws.

Butter, definition of.

Oleomargarine, defined.

Penalty for violation by manufacturer.

for, as required by law, shall, besides being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars; and every person who carries on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than five hundred nor more than two thousand dollars; and every person who carries on the business of a retail dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than fifty nor more than five hundred dollars for each and every offense.

Penalty for failure to pay special tax. (U. S. v. Joyce, 138 Fed. Rep., 455; Morris v. U. S., 161 Fed. Rep., 672; Hartman et al. v. U. S., 168 Fed. Rep., 30, T. D. 1468; Vermont v. U. S., 174 Fed. Rep., 792; T. D. 1579; U. S. v. Shipley et al., T. D. 1504; Enders v. U. S., T. D. 1669.)

Manufacturers' notices, inventories, signs **SEC. 5 [act of Aug. 2, 1886 (24 Stat., 210)].** That every manufacturer of oleomargarine shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five thousand dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector, or under instructions of the Commissioner of Internal Revenue.

Regulations No. 9, T. D. 797, June 6, 1904; T. D. 906, June 20, 1905; and T. D. 1652, August 29, 1910.

Power of attorney by manufacturers to agents to render returns. (T. D. 1263.)

Manufacturers' original packages. **SEC. 6 [act of Aug. 2, 1886 (24 Stat., 210)].** That all oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of oleomargarine, and wholesale dealers in oleomargarine shall be in original

Retail dealers' stamped packages. Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack the oleomargarine sold by them in suitable wooden or paper packages which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary

of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden or paper packages as above described, or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years.

Penalties.

Original packages, no objection to using old boxes for material for new packages. (32 Int. Rev. Rec., 405.)

Waxed cartons or containers for packing oleomargarine inside original packages permissible. (T. D. 1323, Feb. 24, 1908, and T. D. 1563, Nov. 11, 1909.)

Crates made of wooden slats for holding waxed or enameled cardboard cartons within definition of "wooden packages" as original packages for oleomargarine. (T. D. 1613, Apr. 8, 1910.)

Power of commissioner to make regulations as to marks and brands on packages of oleomargarine. (In re Kollock, 165 U. S., 526, 43 Int. Rev., Rec. 170; In re McCaully 165 U. S., 538. Prather v. U. S., 9 Appeal Cases D. C., 82; Wilkins v. U. S., 96 Fed. Rep., 837; T. D. 21623.)

Retail packages, marks, and brands. (U. S. v. Ford, 50 Fed. Rep., 467, distinguishing U. S. v. Eaton, 144 U. S., 677; Dougherty v. U. S., 108 Fed. Rep., 56 (T. D. 335), affirming 101 Fed. Rep., 439; U. S. v. Joyce et al., 138 Fed. Rep., 457; U. S. v. Knott, 151 Fed. Rep., 925; Morris v. U. S., 161 Fed. Rep., 680.)

Limit of 10 pounds retail sales. (U. S. v. Ripper, 178 Fed. Rep., 24; Ripper v. U. S., 179 Fed. Rep., 497; T. D. 1609; Goll v. U. S., 166 Fed. Rep., 419.)

A party is liable for the sale by a clerk or employee of oleomargarine without its being in a stamped or wrapped package. (Prather v. U. S., 9 App. Cases, D. C., 82.)

SEC. 7 [act of Aug. 2, 1886 (24 Stat., 210)]. That every manufacturer of oleomargarine shall securely affix, by pasting, on each package containing oleomargarine manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases." Every manufacturer of oleomargarine who neglects to affix such label to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense is committed.

Caution label of manufacturers.

SEC. 8 [act of Aug. 2, 1886 (24 Stat., 210), as amended by sec. 3, act of May 9, 1902 (32 Stat., 193)]. That upon oleomargarine which shall be manufactured and sold, or removed for consumption or use, there shall be assessed and collected a tax of ten cents per pound, to be paid by the manufacturer thereof; and any fractional part of a pound

Tax per pound.

in a package shall be taxed as a pound: Provided, When oleomargarine is free from artificial coloration that causes it to look like butter of any shade of yellow said tax shall be one-fourth of one cent per pound. The tax levied by this

Tax represented by coupon stamps. *Section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section.*

Use of an ingredient in minute quantities to impart yellow color subjects product to tax at rate of 10 cents per pound. (T. D. 564, Aug. 11, 1902.)

Use of an ingredient containing artificial coloring which imparts shade of yellow makes finished product taxable at 10 cents. (Regulations, No. 9.)

Butter artificially colored as an ingredient in oleomargarine subjects product to higher rate of tax. (McCray v. U. S., 195 U. S., 27; T. D. 795.)

Palm oil constitutes artificial coloration. (Cliff v. U. S., 195 U. S., 159; T. D. 839.)

Palm oil. (Moxley v. Hertz, 216 U. S., 344; T. D. 1596, affirming 173 Fed. Rep., 728; T. D. 1168; Moxley v. Hertz, collector, T. D. 1671.)

Coloring for customer after sale. (W. H. Zinn Co. v. U. S., T. D. 1517.)

Use of a rubber stamp for cancellation of tax-paid stamps for oleomargarine, in lieu of a stencil plate of brass or copper. (T. D. 614, Jan. 12, 1903.)

See chapter under heading "Tobacco and Snuff" for laws relating to stamps.

Stamps issued in book form in denominations of 10, 20, 30, 40, 50, 60, 70, 80, 90, and 100 pounds, and each book contains 200 stamps and 1,800 coupons.

Assessment of tax within two years. SEC. 9 [*act of Aug. 2, 1886 (24 Stat., 211)*]. That whenever any manufacturer of oleomargarine sells, or removes for sale or consumption, any oleomargarine upon which the tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

See Regulations No. 1 concerning assessments.

Tax on imported oleomargarine. SEC. 10 [*act of Aug. 2, 1886 (24 Stat., 211)*]. That all oleomargarine imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of fifteen cents per pound, such tax to be represented by coupon stamps as in the case of oleomargarine manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper custom-house officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but

Stamps.

shall be put up in wooden packages, each containing not less than ten pounds, as prescribed in this act for oleomargarine manufactured in the United States, before the stamps are affixed; and the owner or importer of such oleomargarine shall be liable to all the penal provisions of this act prescribed for manufacturers of oleomargarine manufactured in the United States. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct; and every officer of customs who permits any such oleomargarine to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years. Every person who sells or offers for sale any imported oleomargarine, or oleomargarine purporting or claimed to have been imported, not put up in packages and stamped as provided by this act, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Oleomargarine exported free of tax and reimported dutiable at domestic rates remitted. (T. D. 669, June 16, 1903.)

SEC. 11 [*act of Aug. 2, 1886 (24 Stat., 211).*] That every person who knowingly purchases or receives for sale any oleomargarine which has not been branded or stamped according to law shall be liable to a penalty of fifty dollars for each such offense.

SEC. 12 [*act of Aug. 2, 1886 (24 Stat., 211).*] That every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all articles so purchased or received, or of the full value thereof.

SEC. 13 [*act of Aug. 2, 1886 (24 Stat., 211).*] That whenever any stamped package containing oleomargarine is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon; and any person who willfully neglects or refuses so to do shall for each such offense be fined not exceeding fifty dollars, and imprisoned not less than ten days nor more than six months.

And any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine, any such stamped package, shall for each such offense be fined not exceeding one hundred dollars, and be imprisoned not more than one year.

Warehousing
imported oleo-
margarine.

Penalty for
violation by
customs officer.

Penalty for sell-
ing if not properly
stamped.

Penalty for
purchasing oleo-
margarine not
properly
stamped.

Penalty for
purchasing from
manufacturers
not having paid
special tax.

Stamps on
empty packages
to be destroyed.

Penalty.

Any revenue officer may destroy any emptied oleomargarine package upon which the tax-paid stamp is found.

Failure to destroy stamp on empty package. (*Morris v. U. S.*, 161 Fed. Rep., 672; *Vermont v. U. S.*, 174 Fed. Rep., 792; T. D. 1579; *U. S. v. White & Paller*, U. S. D. C. E. D. Pa.; T. D. 1334; *U. S. v. Ripper*, 178 Fed. Rep., 24; *Ripper v. U. S.*, 179 Fed. Rep., 497; T. D. 1609.)

Chemists and microscopists.

SEC. 14 [act of Aug. 2, 1886 (24 Stat., 212).] That there shall be in the office of the Commissioner of Internal Revenue an analytical chemist and a microscopist, who shall each be appointed by the Secretary of the Treasury, and shall each receive a salary of two thousand five hundred dollars per annum; and the Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose.

Commissioner to decide contested cases.

And such Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this act; and his decision in matters of taxation under this act shall be final.

Appeal.

The Commissioner may also decide whether any substance made in imitation or semblance of butter, and intended for human consumption, contains ingredients deleterious to the public health; but in case of doubt or contest his decision in this class of cases may be appealed from to a board hereby constituted for the purpose, and composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Commissioner (now Secretary) of Agriculture; and the decisions of this board shall be final in the premises.

Forfeiture of stamps and packages and deleterious oleomargarine.

SEC. 15 [act of Aug. 2, 1886 (24 Stat., 212).] That all packages of oleomargarine subject to tax under this act that shall be found without stamps or marks as herein provided, and all oleomargarine intended for human consumption which contain ingredients adjudged, as hereinbefore provided, to be deleterious to the public health, shall be forfeited to the United States. Any per-

Penalty for removing stamps.

son who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine taxed as provided herein shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars, and by imprisonment for not less than thirty days nor more than six months.

Wilkins v. U. S., 96 Fed. Rep., 837; T. D. 21623.

Oleomargarine for export.

SEC. 16 [act of Aug. 2, 1886 (24 Stat., 212).] That oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Com-

missioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin, or other package containing such article the word "Oleomargarine," in plain Roman letters not less than one-half inch square.

Sales to vessels in ports of this country not exportation (T. D. 657, May 18, 1903; *Swan & Finch Co. v. U. S.*, 190 U. S., 143). See Regulations No. 29 concerning exportations.

Oleomargarine reimported subject to duty equal to the internal-revenue tax, although returned to the factory for remanufacture. (T. D. 857.)

Withdrawals of oleomargarine free of tax for export where the tax remitted amounts to \$100 or over can not be afterwards separated into small consignments for the purpose of being accounted for as shipments on which the tax is less than \$100. (T. D. 1662.)

SEC. 17 [act of Aug. 2, 1886 (24 Stat., 212).] That whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the production of oleomargarine found in the factory and on the factory premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

Indictment. *Enders v. U. S.* (T. D. 1669.)

Forfeiture and penalty for defrauding or attempting to defraud. (*Hardesty v. U. S.*, 168 Fed. Rep., 25.)

Information for forfeiture of oleomargarine plant. The language of this section is similar to that in regard to distilled spirits (sec. 3257), and decision under latter section applicable. (*U. S. v. Manufacturing Apparatus, etc., of New Jersey Melting & Churning Co.*, 141 Fed. Rep., 475.)

SEC. 18 [act of Aug. 2, 1886 (24 Stat., 212).] That if any manufacturer of oleomargarine, any dealer therein, or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this act prohibited, if there be no specific penalty or punishment imposed by any other section of this act for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be the manufacturer of or a wholesale dealer in oleomargarine, all the oleomargarine owned by him, or in which he has any interest as owner, shall be forfeited to the United States.

Sales in quantities exceeding 10 pounds at one time by retail dealers, penalty provided in section 18 applies. (*U. S. v. Ripper*, 178 Fed. Rep., 24; *Ripper v. U. S.*, 179 Fed. Rep., 497; T. D. 1609.)

Recovery fines. of SEC. 19 [*act of Aug. 2, 1886 (24 Stat., 212).*] That all fines, penalties, and forfeitures imposed by this act may be recovered in any court of competent jurisdiction.

Regulations. SEC. 20 [*act of Aug. 2, 1886 (24 Stat., 212).*] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful regulations for the carrying into effect of this act.

See citations under section 6, power of Commissioner to make regulations, page 295.

Act in effect Oct. 31, 1886. SEC. 21 [*act of Aug. 2, 1886 (24 Stat., 213)*]. That this act shall go into effect on the ninetieth day after its passage; and all wooden packages containing ten or more pounds of oleomargarine found on the premises of any dealer on or after the ninetieth day succeeding the date of the passage of this act shall be deemed to be taxable under section eight of this act, and shall be taxed, and shall have affixed thereto the stamps, marks, and brands required by this act or by regulations made pursuant to this act; and for the purpose of securing the affixing of the stamps, marks, and brands required by this act, the oleomargarine shall be regarded as having been manufactured and sold, or removed from the manufactory for consumption or use, on or after the day this act takes effect; and such

Stock on hand. stock on hand at the time of the taking effect of this act may be stamped, marked, and branded under special regulations of the Commissioner of Internal Revenue, approved by the Secretary of the Treasury; and the Commissioner of Internal Revenue may authorize the holder of such packages to mark and brand the same and to affix thereto the proper tax-paid stamps.

See section 7, act May 9, 1902, page 304.

Butter defined. SEC. 4 [*act of May 9, 1902 (32 Stat., 94)*]. That for the purpose of this Act "butter" is hereby defined to mean an article of food as defined in "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August second, eighteen hundred and eighty-six; that "adulterated butter" is hereby defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as herein defined, with intent or effect of cheapening in cost the product or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or

A adulterated butter defined. Process or renovated butter defined. cream; that "process butter" or "renovated butter" is hereby defined to mean butter which has been subjected

to any process by which it is melted, clarified or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by this Act. * * *

The provisions of this section imposing special taxes on manufacturers of renovated and adulterated butter and on dealers in adulterated butter will be found on page 143, under head of Special Taxes; also the provision imposing fines for nonpayment of special tax, page 132.

That every manufacturer of process or renovated butter or adulterated butter shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number of his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five hundred dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

That all adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of adulterated butter shall be in original stamped packages.

Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden or paper packages as above described, or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars and be imprisoned not more than two years.

That every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these

Manufacturer's
notices, bonds
inventories, etc.

Signs

Manufacturer's
packages.

Dealers' pack-
ages.

Penalty.

Caution label.

words: "Notice.—That the manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases." Every manufacturer of adulterated butter who neglects to affix such label to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined fifty dollars for each package in respect to which such offense is committed.

Tax on adulterated butter and process or renovated butter. That upon adulterated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of ten cents per pound, to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound, and that upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of one cent per pound to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound. The tax to be levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to the stamps provided by this section.

Stamps.

That the provisions of sections nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August second, eighteen hundred and eighty-six, shall apply to manufacturers of "adulterated butter" to an extent necessary to enforce the marking, branding, identification, and regulation of the exportation and importation of adulterated butter.

Butter containing 16 per cent or more of moisture is held to be adulterated. (Regulations No. 9, concerning adulterated butter and process or renovated butter.)

Explanation of regulations concerning adulterated butter. (T. D. 1009, June 6, 1906.)

Authority of Commissioner to fix moisture limit—intent to manufacture not material if process has that effect. (Coopersville Cooperative Creamery Co. v. Lemon, 163 Fed. Rep., 145; T. D. 1371; T. D. 1679, March 3, 1911.)

Refined butter, manufactured from salt, glucose, and imported low-grade or "grease" butter, is held subject to tax as adulterated butter. (T. D. 557, July 19, 1902.)

Ladled butter containing 16 per cent of moisture liable to stamp tax at 10 cents per pound. (T. D. 783.)

Evidence showing reasonable diligence to keep moisture content within requirements of law not sufficient to relieve from liability. (West Point Butter and Creamery Co. v. Hammond, collector. Cir. Ct. 8th circuit, T. D. 1667, December 28, 1910.)

Forwarding samples for analysis. (T. D. 1587.)

Method of sampling butter. (T. D. 1618.)

Adulterated butter.—No assessment should be recommended on the basis of a single sample unless there is other evidence. (T. D. 1539.)

SEC. 5 [*act of May 9, 1902 (32 Stat., 196).*] All parts of an Act providing for an inspection of meats for exportation, approved August thirtieth, eighteen hundred and ninety, and of an Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, approved March third, eighteen hundred and ninety-one, and of amendment thereto approved March second, eighteen hundred and ninety-five, which are applicable to the subjects and purposes described in this section shall apply to process or renovated butter. And the Secretary of Agriculture is hereby authorized and required to cause a rigid sanitary inspection to be made, at such times as he may deem proper or necessary, of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same. All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section. The Secretary of Agriculture shall make all needful regulations for carrying this section into effect, and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and the condition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same. Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment not less than one month nor more than six months, or by both said punishments, in the discretion of the court.

Inspection of
renovated butter.

Marking of ren-
ovated butter.

Secretary of
Agriculture shall
make regulations.

Penalty.

Removal of marks, brands, stamps, and caution labels a crime. (*U. S. v. Green*, 137 Fed. Rep., 179; T. D. 980, T. D. 578; *contra*, *U. S. v. Bohl*, 125 Fed. Rep., 625.)

The Food and Drugs Act of June 30, 1906, (34 Stat., 768.) The Secretary of Agriculture is charged with the enforcement of this act.

NOTE.—No provision is made in the act of May 9, 1902, for the exportation, free of tax, of *renovated* butter nor for drawback of tax on such articles when exported. Consequently, all renovated butter for export must be stamped and marked the same as for the domestic market.

[Act Apr. 23, 1904, making appropriation for Department of Agriculture.]

* * * That the Secretary of Agriculture may construe the provisions of the act of March third, eighteen hundred and ninety-one, as amended March second, eighteen hundred and ninety-five, for the inspection of live cattle and products thereof, to include dairy products intended for exportation to any foreign country and may apply, under rules and regulations to be prescribed by him, the provisions of said act for inspection and certification appropriate for ascertaining the purity and quality of such products and may cause the same to be so marked, stamped, or labeled as to secure their identity and make known in markets of foreign countries to which they may be sent from the United States their purity, quality, and grade; and all the provisions of said act relating to live cattle and products thereof for export shall apply to dairy products so inspected and certified. (See Regulations No. 9 and No. 29.)

Returns, books,
etc., of wholesale
dealers.

SEC. 6 [act of May 9, 1902 (32 Stat., 197).] That wholesale dealers in oleomargarine, process, renovated, or adulterated butter shall keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent. And any person who willfully violates any of the provisions of this section shall for each such offense be fined not less than fifty dollars and not exceeding five hundred dollars, and imprisoned not less than thirty days nor more than six months.

Section 41, act of October 1, 1890 (26 Stat., 621), relative to wholesale dealers in oleomargarine keeping books and rendering returns superseded by this section.

Collectors of internal revenue should require power of attorney, in proper legal form, from agents of manufacturers of oleomargarine, etc., who render and sign monthly returns. (T. D. 1263.)

Failure by wholesale dealer to keep books and render returns; although corporations are not mentioned in sec. 6 it was intended to embrace them. (U. S. v. Union Supply Co., 215 U. S., 50; T. D. 1564.)

SEC. 7 [act of May 9, 1902 (32 Stat., 197).] This act shall take effect on the first day of July, nineteen hundred and two.

Oleomargarine law constitutional. (McCray v. U. S., 195 U. S., 27; T. D. 795; Schick v. U. S., Broadwell v. U. S., 195 U. S., 65; T. D. 802.)

The oleomargarine act is not unconstitutional as a delegation of legislative power to an administrative branch of the Government. (Lockwood v. U. S., C. C. A., 1909, 178 Fed. Rep., 437.)

Constitutionality of State laws relating to oleomargarine:

The statute of Pennsylvania prohibiting the manufacture and sale of oleomargarine within the State not unconstitutional. (Powell v. Pa., 127 U. S., 675; 34 Int. Rev. Rec., 166.)

New Hampshire law prohibiting sale of oleomargarine unless colored pink unconstitutional. (Collins v. New Hampshire, 171 U. S., 30.)

CHAPTER TEN.

FILLED CHEESE.

[Act of June 6, 1896. (29 Stat., 253.)]

Sec.

- 1 and 2. Definitions.
- 5. Manufacturers' notice, books, bonds, etc.
- 6, 7, and 8. Marks, signs, label, stamps.
- 9 and 10. Tax on filled cheese.
- 11. Imported filled cheese.
- 12 and 13. Penalties.

Sec.

- 14. Destruction of stamps on empty packages.
- 15. Scientific tests.
- 16 and 17. Relative to fines and forfeitures.
- 18. Regulations authorized.
- 19. When act to take effect.

AN ACT Defining cheese, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of "filled cheese."

SEC. 1. [Act of June 6, 1896 (29 Stat., 253).] That for the purpose of this Act, the word "cheese" shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter. Cheese defined.

SEC. 2. That for the purposes of this Act certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Filled cheese defined.

Enacting clause, act of August 2, 1886, as amended by act of May 9, 1902, makes all imitation dairy products subject to laws of States into which transported.

Special Taxes.—Sections 3 and 4 of the act of June 6, 1896, imposing special taxes on manufacturers and dealers and penalties for failure to pay special taxes, will be found in chapter 3, "Special Taxes," page 144.

SEC. 5. That every manufacturer of filled cheese shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of materials and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five thousand dollars; and the amount of said bond may be increased Bonds, notices, and inventories of manufacturer.

Books and returns.

from time to time, and additional sureties required, at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. Any manufacturer of filled cheese who fails to comply with the provisions of this section or with the regulations herein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five hundred nor more than one thousand dollars.

Penalty.

Packages.

Manufacturer's
marks and
brands.

SEC. 6. That filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters of not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled

Retail dealers.

cheese shall be in original stamped packages. Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as hereinbefore provided and as above described, or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than fifty dollars and not more than five hundred dollars or be imprisoned not less than thirty days nor more than one year.

Penalties.

Signs of whole-
sale and retail
dealers.

SEC. 7. That all retail and wholesale dealers in filled cheese shall display in a conspicuous place in his or their sales room a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted; and any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than fifty dollars and not more than two hundred dollars.

Penalty.

SEC. 8. That every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and state in which it is situated, these words: "Notice.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases." Every manufacturer of filled cheese who neglects to affix such label to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense is committed.

SEC. 9. That upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of one cent per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section.

See sections 3218, 3369, 3445, and 3446, Revised Statutes.

Filled cheese for export to be tax paid. (*Cornell v. Coyne*, 192 U. S., 418; T. D. 757.)

SEC. 10. That whenever any manufacturer of filled cheese sells or removes for sale or consumption any filled cheese upon which the tax is required to be paid by stamps, without paying such tax, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

SEC. 11. That all filled cheese as herein defined imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal-revenue tax of eight cents per pound, such tax to be represented by coupon stamps; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States.

SEC. 12. That any person who knowingly purchases or receives for sale any filled cheese which has not been

Label.

Penalty.

Tax on prod-
uct.

Coupon stamps.

Assessment
of stamp tax.

Imported tax
on.

Penalty.

branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of fifty dollars for each such offense.

Penalty.

SEC. 13. That every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax herein provided for shall be liable, for each offense, to a penalty of one hundred dollars and to a forfeiture of all articles so purchased or received, or of the full value thereof.

Empty packages; stamps to be destroyed.

SEC. 14. That whenever any stamped package containing filled cheese is emptied it shall be the duty of the person in whose hands the same is to destroy the stamps thereon; and any person who willfully neglects or refuses so to do shall, for each such offense, be fined not exceeding fifty dollars or imprisoned not less than ten days nor more than six months.

Deleterious ingredients. Commissioner to decide.

Appeal.

SEC. 15. That the Commissioner of Internal Revenue is authorized to have applied scientific tests, and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health. But in case of doubt or contest his decision in this class of cases may be appealed from to a board hereby constituted for the purpose, and composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Secretary of Agriculture, and the decision of this board shall be final in the premises.

Forfeiture.

SEC. 16. That all packages of filled cheese subject to tax under this Act that shall be found without stamps or marks as herein provided, and all filled cheese intended for human consumption which contains ingredients adjudged as hereinbefore provided to be deleterious to the public health, shall be forfeited to the United States.

Fines, penalties, etc., recoverable.

SEC. 17. That all fines, penalties, and forfeitures imposed by this Act may be recovered in any court of competent jurisdiction.

Regulations.

SEC. 18. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful regulations for the carrying into effect of the provisions of this Act.

Regulations No. 22 relative to filled cheese.

Effective, date when.

SEC. 19. That this Act shall go into effect on the ninetieth day after its passage, and all wooden packages containing ten or more pounds of filled cheese found on the premises of any dealer on and after the ninetieth day succeeding the date of the passage of this Act, shall be deemed to be taxable under section nine of this Act, and shall be taxed, and shall have affixed thereto the stamps, marks, and brands required by this Act or by regulations made pursuant to this Act; and for the purpose of securing the affixing of the stamps, marks, and brands required by this Act, the filled cheese shall be regarded as having

been manufactured and sold or removed from the manufactory for consumption or use on or after the day this Act takes effect; and such stock on hand at the time of the taking effect of this Act may be stamped, marked, and branded under special regulations of the Commissioner of Internal Revenue, approved by the Secretary of the Treasury; and the Commissioner of Internal Revenue may authorize the holder of such packages to mark and brand the same and to affix thereto the proper tax-paid stamps.

Circular letter to collectors and revenue agents relative to the enforcement of the law imposing a tax on filled cheese. (T. D. 1516.)

CHAPTER ELEVEN.

MIXED FLOUR.

[Sections 35 to 49, act of June 13, 1898 (30 Stat., 448), as amended by act April 12, 1902 (32 Stat., 96).]

Sec.	Sec.
35. Mixed flour defined.	43. Penalty and forfeiture.
36. Special tax.	44. Removal for export.
37. Marks and brands; penalty.	45. Destruction of stamps on empty packages; penalty.
38. Packages; penalty.	46. Penalties recoverable.
39. Label; penalty.	47. Regulations. Additional clerks and agents.
40. Tax, stamps, laws applicable. Repacked flour; penalty.	48. Penalty for subsequent violations.
41. Assessment of tax on mixed flour when removed without stamps.	49. Date when act takes effect.
42. Tax on imported mixed flour; penalty.	

SEC. 35. [Act June 13, 1898 (30 Stat., 467), as amended by sec. 13, act Mar. 2, 1901 (31 Stat., 949), and act of Apr. 12, 1902 (32 Stat., 99).] That for the purposes of this Act,

Mixed flour defined. the words "mixed flour" shall be taken and construed to mean the food product resulting from the grinding or mixing together of wheat, or wheat flour, as the principal constituent in quantity, with any other grain, or the product of any other grain, or other material, except such material, and not the product of any grain, as is commonly used for baking purposes: *Provided*, That when the product resulting from the grinding or mixing together of wheat or wheat flour with any other grain, or the product of any other grain, of which wheat or wheat flour is not the principal constituent as specified in the foregoing definition, is intended for sale, or is sold, or offered for sale as wheat flour, such product shall be held to be mixed flour within the meaning of this Act.

See pages 7-8, Regulations, No. 25, revised August, 1907.
"Pancake" and "Compound" Flours are classed as "mixed flour" if wheat flour is principal ingredient. (T. D. 971, Jan. 27, 1906.)

Special taxes. SEC. 36. That every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of twelve dollars per annum, the same to be paid and posted in accordance with the provisions of sections thirty-two hundred and forty-two and thirty-two hundred and thirty-nine of the Revised Statutes, and subject to the fines and penalties therein imposed for any violation thereof.

Mixed flour—Investigations by collectors as to proper returns. (T. D. 471, Feb. 6, 1902.)

SEC. 37. That every person, firm, or corporation making, packing, or repacking mixed flour shall plainly mark or brand each package containing the same with the words "mixed flour" in plain black letters not less than two inches in length, together with the true weight of such package, the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed. In addition thereto, such maker or packer shall place in each package a card not smaller than two inches in width by three inches in length, upon which shall be printed the words "mixed flour," together with the names of the ingredients composing the same, and the name of the maker or packer, and the place where made or packed. Any person, firm, or corporation making, packing, or repacking mixed flour hereunder, failing to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or be imprisoned not less than sixty days nor more than one year.

Pages 12-13, Regulations, No. 25, revised August, 1907.

SEC. 38. That all sales and consignments of mixed flour shall be in packages not before used for that purpose; and every person, firm, or corporation knowingly selling or offering for sale any mixed flour in other than marked and branded packages, as required by the provisions of this Act relating to the manufacture and sale of mixed flour, or who packs in any package or packages any mixed flour in any manner contrary to the provisions relating to the manufacture and sale of mixed flour of this Act, or who falsely marks or brands any package or packages containing mixed flour, or unlawfully removes such marks or brands, shall, for each such offense, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not less than thirty days nor more than one year.

SEC. 39. That in addition to the branding and marking of mixed flour as herein provided, there shall be affixed to the packages containing the same a label in the following words: "Notice.—The (manufacturer or packer, as the case may be) of the mixed flour herein contained has complied with all the requirements of law. Every person is cautioned not to use this package or label again or to remove the contents without destroying the revenue stamp thereon, under the penalty prescribed by law in such cases." Every person, firm, or corporation failing or neglecting to affix such label to any package containing mixed flour made or packed by him or them, or who removes from any such package any label so affixed, shall, upon conviction thereof, be fined not less than fifty dollars for each label so removed.

Packages,
marks
and
brands.

Cards in pack-
ages.

Penalty.

Packages, char-
acter.

Penalty.

Label.

Penalty.

Tax on product. SEC. 40. That barrels or other packages in which mixed flour may be packed shall contain not to exceed one hundred and ninety-six pounds; that upon the manufacture and sale of mixed flour there shall be levied a tax of four cents per barrel or other package containing one hundred and ninety-six pounds or more than ninety-eight pounds; two cents on every half barrel or other package containing ninety-eight pounds or more than forty-nine pounds; one cent on every quarter barrel or other package containing forty-nine pounds or more than twenty-four and one-half pounds; and one-half cent on every one-eighth barrel or other package containing twenty-four and a half pounds or less, to be paid by the person, firm, or corporation making or packing said flour. The tax levied by this

Coupon stamps. section shall be represented by coupon stamps, and the **Laws applicable.** provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff shall, so far as applicable, be made to apply to stamps provided in this section: *Provided*, That when mixed flour, on the manufacture and sale of which the tax herein imposed has been paid, is sold and then repacked without the addition of

Repacked, not taxable. any other material, such repacked flour shall not be liable to any additional tax; but the packages containing such repacked flour shall be branded or marked as required by the provisions of section thirty-seven of this Act, and shall contain the card provided for in section thirty-seven hereof; and in addition thereto the person, firm, or corporation repacking mixed flour shall place on the packages containing the same a label in the following words: "Notice.—The contents of this package have been taken from a regular statutory package, upon which the tax has been duly paid." Any person violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not to exceed one year.

Cartons or other small unstamped packages in original packages, page 16, Regulations, No. 25.

Assessment of stamp tax. SEC. 41. That whenever any person, firm, or corporation sells, consigns, or removes for sale, consignment, or consumption any mixed flour upon which the tax required by this Act has not been paid, it shall be the duty of the Commissioner of Internal Revenue, for a period of not more than one year after such sale, consignment, or removal, upon satisfactory proof, to estimate the amount of tax which should have been paid, and to make an assessment therefor and certify the same to the collector of the proper district. The tax so assessed shall be in addition to the penalties imposed by this Act for an unauthorized sale or removal.

Imported mixed flour, tax thereon, etc. SEC. 42. That all mixed flours, imported from foreign countries, shall, in addition to any import duties imposed thereon, pay an internal revenue tax equal in amount to

the tax imposed under section forty of this Act, such tax to be represented by coupon stamps, and the packages containing such imported mixed flour shall be marked, branded, labeled, and stamped as in the case of mixed flour made or packed in the United States. Any person, firm, or corporation purchasing or receiving for sale or repacking any such mixed flour which has not been branded, labeled, or stamped, as required by this Act, or which is contained in packages which have not been marked, branded, labeled, or stamped, as required by this Act, shall, upon conviction, be fined not less than fifty dollars nor more than five hundred dollars.

Penalty.

SEC. 43. That any person, firm, or corporation knowingly purchasing or receiving for sale or for repacking and resale any mixed flour from any maker, packer, or importer, who has not paid the tax herein provided, shall, for each offense, be fined not less than fifty dollars, and forfeit to the United States all the articles so purchased or received, or the full value thereof.

Penalty.

SEC. 44. That mixed flour may be removed from the place of manufacture or from the place where packed for export to a foreign country without payment of tax or affixing stamps or label thereto, under such regulation and the filing of such bond and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person, firm, or corporation who shall export mixed flour shall plainly mark on each package containing the same the words "mixed flour," and the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed, in accordance with the provisions of sections thirty-six to forty-five, inclusive, of this Act.

Removal for export.

See Regulations No. 29 relative to all exportations under Int. Rev. Laws.

SEC. 45. That whenever any package containing mixed flour is emptied it shall be the duty of the person in whose possession it is to destroy the stamp thereon. Any person disposing of such package without first having destroyed the stamp or mark or marks thereon shall, upon conviction, be punished by a fine not exceeding the sum of twenty-five dollars.

Empty packages; stamps destroyed.

Penalty.

SEC. 46. That all fines, penalties, and forfeitures imposed by section thirty-six to section forty-five, both inclusive, of this Act may be recovered in any court of competent jurisdiction.

Penalties recoverable.

SEC. 47. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying into effect the provisions relating to the manufacture and sale of mixed flour, being section thirty-five to section forty-nine, both inclusive, of this Act (and the said Commissioner of Internal Revenue, by and with the approval of the Secretary of the Treasury, for the purpose of carrying

Regulations by Commissioner.

said last-mentioned provisions of this Act into effect, is hereby authorized to employ such additional clerks and agents as may be necessary for that purpose, not to exceed twenty in number.)

Regulations No. 25 revised August, 1907.

The provision in regard to employment of clerks and agents is obsolete.

As to agents, see Leg. Ex. and Jud. Appro. Act of April 28, 1902, page 68.

Penalty for subsequent violation.

SEC. 48. That any person, firm, or corporation found guilty of a second or any subsequent violation of any of the provisions of section thirty-six to section forty-five, both inclusive, relating to the manufacture and sale of mixed flour as aforesaid, of this Act shall, in addition to the penalties herein imposed, be imprisoned not less than thirty days nor more than ninety days.

Effective, date when.

SEC. 49. That the provisions of this Act relating to the manufacture and sale of mixed flour shall take effect and be in force sixty days from and after the date of the passage of this Act; and all packages of mixed flour found on the premises of any person, firm, or corporation on said day, who has made, packed, or repacked the same, on which the tax herein authorized has not been paid, shall be deemed taxable under the provisions of section thirty-six to section forty-five, both inclusive, of this Act, and shall be taxed and have affixed thereon such marks, brands, labels, and stamps as required by the provisions of said sections or by the rules and regulations prescribed by the Commissioner of Internal Revenue, under authority of this Act.

CHAPTER TWELVE.

LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL PROPERTY.

[Sections 29 and 30. Act of June 13, 1898. (30 Stat., 464.)]

The tax on legacies (sec. 29) was repealed by section 7 of the act of April 12, 1902 (32 Stat., 96), taking effect July 1, 1902.

No legacy tax accrued where the testator died prior to the act of June 13, 1898. (Penn. Co. for Insurance on Lives and Granting Annuities *v.* Collector McClain, 105 Fed. Rep., 367, T. D. 343.)

Legacy tax constitutional. (Knowlton et al. *v.* Moore, collector, 178 U. S., 41; T. D., 129, 1900.)

Vanderbilt *v.* Eidman. (196 U. S., 480; T. D., 868; Decision in United States circuit court, southern district of N. Y., 121 Fed. Rep., 590; T. D., No. 618.)

SAVING CLAUSE.

SEC. 8. [*of the act of April 12, 1902 (32 Stat., 96.)*] That all taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this Act, shall be subject, as to lien, charge, collection, and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows:

"SEC. 30. That the tax or duty aforesaid shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof, in writing, to the collector or deputy collector of the district where the deceased grantor or bargainer last resided within thirty days after he shall have taken charge of such trust, and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, or in which the property was located in case of nonresidents, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector

Legacy tax a
lien" on testator's
property.

Notice by ex-
ecutor, etc.

Payment.

Schedules, etc. or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first

Receipts.

Assessment,
etc., by collector
on failure of ex-
ecutor, etc.

Legal proceed-
ings to recover.

paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this Act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this Act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of five hundred dollars: *Provided*, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be prima facie evidence of its truth, and that the requirements of the law had been complied with by the officers of the Government: *And provided further*, That in case of willful neglect, refusal, or false statement by such executor, administrator, or trustee, as aforesaid, he shall be liable to a penalty of not exceeding one thousand dollars, to be recovered with costs of suit. Any tax paid under the provisions of sections twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged.

Effect of the repealing act.—The war revenue act of June 13, 1898, as amended, provided for a tax on legacies to become due and payable in one year after the death of the testator, and to be a lien and charge on his property for 20 years.

Such provisions were repealed by the act of April 12, 1902, with a saving clause as to all taxes imposed thereby prior to July 1, 1902, when the repeal took effect.

The act of June 27, 1902, prohibited the further assessment or imposition of any tax under said act "upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment" prior to July 1, 1902, and required the refunding of taxes previously collected on any such interests. *Held*, that where a testator who died in December, 1901, bequeathed a share of his residuary estate in trust, the income to be paid to a son during his life, the life estate of the son in the income of the trust property became absolutely vested in enjoyment at once on the death of the testator, and subject to the tax; that the tax was "imposed" by the statute itself at the time of such vesting without reference to the time when it became due and payable or to any act of assessment by the internal revenue officers, which was merely an administrative

Title vested in
purchaser.

Exhibition of
papers, etc.

Penalty for re-
fusal.

Provisos.

Effect of recital
of deed.

Penalty for neg-
lect, etc.

Deduction.

detail necessary to fix the amount but not affecting the time when the tax was imposed or became a lien. (*Westhus et al. v. Union Trust Co.*, 164 Fed. Rep., 795; 168 Fed. Rep., 617; petition for rehearing denied. *Contra Lynch v. Union Trust Co.*, 164 Fed. Rep., 161.)

The fact that the testator dies within one year prior to the taking effect of the repealing act of April 12, 1902, does not relieve from taxation legacies otherwise taxable under sections 29 and 30 of the act of June 13, 1898, as amended by the act of March 2, 1901, being saved by the saving clause of the repealing act. (*Hertz, Collector, v. Woodman* (218 U. S., 205), T. D. 1636, overruling decision in *Eidman v. Tilghman* (136 Fed. Rep., 141).)

In *Disston v. McClain, collector* (1906), it was held that an annuity passing as a legacy prior to repeal of the act, payable in quarterly installments out of the income of personal property during the life of the beneficiary was taxable, only as to so much of the income as was vested in the actual possession of the legatee prior to the 1st day of July, 1902, when the law was repealed. (147 Fed. Rep., 114, reversing 143 Fed. Rep., 191; T. D. 976.)

A petition was filed in the United States Supreme Court for a writ of certiorari in this case, but the court refused to issue the writ. (207 U. S., 587.)

**REFUND OF TAX ON LEGACIES AND BEQUESTS FOR USES OF
A RELIGIOUS, CHARITABLE, OR EDUCATIONAL CHARACTER;
REFUND OF TAX ON CONTINGENT BENEFICIAL
INTERESTS, WHICH HAD NOT BECOME VESTED JULY 1,
1902.—NO TAX TO BE ASSESSED ON CONTINGENT BENE-
FICIAL INTERESTS NOT VESTED JULY 1, 1902.**

AN ACT To provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes, approved June 27, 1902. (32 Stat., 406.)

SEC. 1. That the Secretary of the Treasury, under appropriate rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the corporations, associations, societies, or individuals as trustees or executors, such sums of money as have been paid by them as taxes upon bequests or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, under the provisions of section twenty-nine of the Act entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight.

SEC. 2. (See p. 340.)

SEC. 3. That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in

the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two.

* * * * *

Circular No. 627, relative to refunding legacy taxes as provided in the first paragraph. July 3, 1902. T. D. No. 543.

The act of June 27, 1902, relative to the refund of tax collected on contingent beneficial interests not vested prior to July 1, fixes no time within which the claim for refund must be filed with the collector.

If the two years' limit is applicable under section 3228, R. S., it must be two years from the passage of the act and not two years from payment of the tax. *Thacher v. United States*. (United States Circuit Court, District of Massachusetts, 149 Fed. Rep., 902; 26 Op. Atty. Gen., 194.)

Attorney General's opinion as to vested interests, August 1, 1902. (T. D. 570, modifying Circular No. 630, T. D. 552; 24 Op. Atty. Gen., 98.)

CHAPTER THIRTEEN.

SPECIAL EXCISE TAX ON CORPORATIONS.

[Sec. 38, act of August 5, 1909. (36 Stat., 112.)]

Sec.

38. Excise tax on corporations; rate of tax; organizations excepted.
Second. Net income; how determined.
Third. Annual returns required from officers of corporations; computation of tax.
Fourth. Procedure when returns are incorrect; failure to make returns; books may be examined; attendance of witnesses compelled.
Fifth. Assessment of tax; addition to tax for false returns; payment of tax; penalty for failure to pay; notice; limitation; penalty; interest.
Sixth. Returns to be filed in office of Commissioner of Internal Revenue.

Sec.

38. Excise tax, etc.—Continued.
Seventh. Government officer or employee divulging information; penalty.
Eighth. Failure to make true returns; false returns; penalty; revenue laws made applicable for collection, etc., of tax; jurisdiction United States courts to compel testimony and production of books, etc.
Act of June 17, 1910 (36 Stat., 494). Appropriation for expenses of collecting corporation tax. Returns open to inspection by order of the President.
Act of June 25, 1910 (36 Stat., 780). Additional employees authorized.

Corporations
subject to tax.
(36 Stat. 112.)

SEC. 38. [Act of Aug. 5, 1909.] That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during

Rate.

such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however,* That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Corporations
exempt from tax.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided,* That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from

Net income:
how ascertained.

Foreign corpo-
rations: deduc-
tions allowable.

business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed.

*Assessment
insurance companies, reserve
funds.* In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

Specific deduction. Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax

computation of tax. shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of

*Return to be
made on or before
March 1 to collector
of district.* March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies,

subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia: (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums

Items to be re-
ported on return.

Deductions al-
lowed. Ex-
penses.

Losses actually
sustained. De-
preciation.

other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth)

^{Interest actual-}
ly paid.
the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it

^{Interest paid}
by foreign corpo-
rations to be ap-
portioned.
within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Commissioner
may require in-
formation as to
incorrect or delin-
quent return.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the Commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal

Revenue agents
to examine books,
etc.

Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attend-

ance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax

Commissioner
may amend or
make return.

Penalty for false
or fraudulent re-
turn.

Collector may
extend time for
making return.

Penalty. When
and how collected.

Notification
of assessments.

Penalty for
nonpayment
when due.

unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

T. D. 1659, Oct. 20, 1910; sec. 3184, p. 95.

Returns to be filed with Commissioner. Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Amended by the Act of June 17, 1910, which provides that the returns shall be open to inspection only upon the order of the President, page 328.

Unlawful to divulge information. Penalty. Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Penalty for refusal or neglect to make return, or making false or fraudulent return. Eighth. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return who makes false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

Laws made applicable. All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction conferred on United States courts. Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

Regulations relating to the assessment and collection of the special excise tax imposed on corporations, joint-stock companies,

associations, and insurance companies. (Regulations No. 31, Dec. 3, 1909; T. D. 1571.)

Excise tax—Publicity clause. (T. D. 1594, Feb. 17, 1910; Executive Order, T. D. 1665, Nov. 28, 1910.)

Synopsis of decisions relating to the tax. (T. D. 1606, Mar. 29, 1910; revised T. D. 1675, Feb. 14, 1911.)

Corporations engaged in business after approval of act of August 5, 1909, are amenable to the provisions of section 38, although having gone into liquidation prior to December 31, 1909. (T. D. 1615, Apr. 15, 1910.)

Assets belonging to corporations liable to this tax are subject to the lien created by section 3186, R. S., after demand has been made for the tax. Where assets have been distributed prior to such demand the Government may collect the tax by pursuing the assets into the hands of the stockholders. (28 Op. Atty. Gen., 241; T. D. 1615.)

As the tax imposed is measured by and is not a tax upon the net receipts of corporations, etc., interest received during the year on Government bonds is not a proper deduction from such income in determining the amount of tax due. (28 Op. Atty. Gen., 138; T. D. 1583.)

Dividends received by corporations on stock of other corporations whose net income does not exceed \$5,000 is nevertheless a proper deduction under the law. (28 Op. Atty. Gen., 140, Jan. 24, 1910.)

Limited partnerships under Pennsylvania Statutes, if organized for profit and having a capital stock represented by shares, although "no certificates of stock" are issued, are liable to the tax. (28 Op. Atty. Gen., 189, Feb. 14, 1910.)

Mutual savings banks under West Virginia Statutes having no capital stock not liable to tax. (28 Op. Atty. Gen., 189, Feb. 14, 1910.)

Mortgage indebtedness on real estate, if assumed by the corporation acquiring such real estate, to be included in the indebtedness of the corporation. But if not so assumed and remains only as a lien on the property, interest paid thereon may be deducted as a charge "made as a condition to the continued use or possession of the property." (28 Op. Atty. Gen., 198, Feb. 21, 1910.)

Stella P. Flint, as general guardian, etc., *v.* Stone Tracy Co. et al. (Test Case in United States Supreme Court; appeal from United States circuit court, district of Vermont.) Decided March 13, 1911. Constitutionality of the act sustained. (T. D. 1685.)

A corporation which owned an office building, leased the property for 130 years and reorganized, practically going out of business, its sole authority being to hold title and receive and distribute the rentals or proceeds of sale, if the property should be sold, *Held*, Not liable to the tax. *Zonne v. Minneapolis Syndicate*, Supreme Court decision Mar. 13, 1911. (T. D. 1687.)

Certain real estate trusts in Massachusetts not liable. Congress intended to embrace only such corporations and joint-stock associations as are organized under some statute, or derive from that source some quality or benefit not existing at the common law. *Eliot v. Freeman et al.* (Cushing Real Estate Trust). *Maine Baptist Missionary Convention v. Cotting et al. Trustees (Department Store Trust)*, Supreme Court decision Mar. 13, 1911. (T. D. 1686.)

[Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1911, approved June 17, 1910. (36 Stat. 494.)]

* * * * *

For expenses of collecting the corporation tax authorized by the Act approved August fifth, nineteen hundred and nine: "To provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," one hundred thousand dollars.

Appropriation
for expenses.

For classifying, indexing, exhibiting and properly caring for the returns of all corporations, required by section thirty-eight of an Act entitled "An Act to provide revenue, equalize duties, encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, including the employment, in the District of Columbia, of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars:

Returns open to inspection on inspection only upon the order of the President under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President.

See also the legislative, executive, and judicial appropriation act approved March 4, 1911, which appropriates the same amount for the year ending June 30, 1912, repeating the proviso. (36 Stat., 1197.)

Deficiency appropriation act of March 4, 1911 (36 Stat., 1291), appropriates \$5,000 for the purposes above specified, repeating the proviso.

Executive Order and Regulations governing the publicity of returns November 25, 1910. (T. D. 1665.)

[Extract from the deficiency appropriation Act for 1910. (Act of June 25, 1910, 36 Stat., 780.)]

A dditional force authorized. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized out of the appropriation made for the purpose of carrying into effect section thirty-eight of the tariff Act of August fifth, nineteen hundred and nine, for the fiscal year nineteen hundred and eleven, and out of the balance of the appropriation for that purpose for the fiscal year nineteen hundred and ten, which balance is hereby reappropriated and made available for the fiscal year nineteen hundred and eleven, to employ such additional force of internal-revenue agents, inspectors, deputy collectors, clerks, laborers, and other assistants as he may deem proper and necessary to the prompt operation and enforcement of said section thirty-eight.

* * * * *

See also the deficiency appropriation act of March 4, 1911 (36 Stat., 1291), which reenacts authority to employ additional force.

CHAPTER FOURTEEN.

STAMP TAXES ON SPECIFIC OBJECTS.

Sec.	
3422.	Affixing stamps to instruments to render them valid.
3426 (amended).	Superseded by Act of May 12, 1900 (amended). Redemption of stamps.
3429 (amended).	Forging, counterfeiting, etc., or fraudulently using or selling stamps, etc.; penalties.
23.	Act August 5, 1909. Manufacture of articles intended for exportation in bonded warehouses.
3433 (amended).	Articles for exportation, manufactured in bonded warehouses.
[3433a.]	Withdrawal of distilled spirits by manufacturer of cordials, liquors, etc.
[3433b.]	Section 15, act May 28, 1880. Allowance for loss in transit.
25.	Act August 5, 1909. Drawback.
26.	Act August 5, 1909. Duties on re-imported taxable articles.
	Sec.
	3437. Assessment of stamp taxes where articles are removed without being stamped.
	Act of June 13, 1898:
	Sec. 13. Provisions for stamping any document issued without stamps.
	14. Unstamped instruments not admissible as evidence.
	15. Recording unstamped instruments.
	Act of June 27, 1902. Refund of tax on export bills of lading.
	Act of March 4, 1907. Refund of tax on export ship's manifests.
	Act of February 1, 1909. Refund of tax on foreign bills of exchange.
	Act of June 25, 1910. Extension of time for refunding stamp taxes on foreign bills of exchange.

For former acts of Congress requiring stamps to be affixed to certain written instruments, see act of July 1, 1862, Schedule B following section 110 (12 Stat., 479); act of March 3, 1863, section 6 (12 Stat., 720); act of June 30, 1864, section 151 (13 Stat., 291); act of March 3, 1865, section 1 (13 Stat., 469); act of July 13, 1866 (14 Stat., 141); act of June 23, 1874, section 1 (18 Stat., part 3, 250).

The act of June 6, 1872, section 36 (17 Stat., 256), provided for the repeal, on and after October 31, 1872, of stamp taxes on instruments, except the tax of 2 cents on bank checks, drafts, and orders, which was repealed by the act of March 3, 1883 (22 Stat., 488).

Taxes were imposed by the act of June 13, 1898, on instruments and documents, under Schedule A thereof, and were repealed in part by the act of March 2, 1901, and wholly repealed by the war-revenue repeal act (act of Apr. 12, 1902) (32 Stat., 96) taking effect July 1, 1902.

SEC. 3422. * * * Provided, That, hereafter, in all cases where the party has not affixed to any instrument affixing stamps required by law thereon, at the time of making or issuing the said instrument, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or if said instrument be lost, to a copy thereof, he or they shall appear before the collector of the revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of double the amount of tax remaining unpaid, but in no case less

to unstamped instruments.

than five dollars, and where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such instrument or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued.

When instruments not stamped through accident, mistake, etc.

Act of Feb. 18,
1875. (18 Stat.,
316.)

Collector can
remit penalty.

And provided further, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamps, or to evade or delay the payment thereof, then, and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of revenue to be stamped, and the stamp-tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid, and to cause such instrument to be duly stamped.

And when the original instrument, or a certified or duly proved copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original records, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument, has been corrected pursuant to law; and the original instrument, or such certified copy of the record thereof may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped. But no right acquired in good faith before the stamping of such instrument or copy thereof, and the recording thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

The above section was practically superseded by section 13, act of June 13, 1898 (30 Stat., 448), page 338.

See act to provide for the stamping of unstamped instruments, etc., approved June 23, 1874 (18 Stat., 250), and act to extend the time for stamping unstamped instruments approved February 25, 1876 (19 Stat., 5).

SEC. 3426 [as amended by sec. 17, act of Mar. 1, 1879 (20 Stat., 327)]. Redemption of stamps, etc.

This section has been superseded by the following Act:

REDEMPTION OF STAMPS.

An Act Authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal-revenue stamps. (Act of May 12, 1900 (31 Stat., 177), as amended by the act of June 30, 1902 (32 Stat., 506).)

That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected. Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner of Internal Revenue, or until satisfactory proof has been made showing the reason why the same can not be returned; or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

Provided, That documentary and proprietary stamps issued under the provisions of "An act to provide ways and means for war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, may be redeemed only when presented in quantities of two dollars or more, face value:

Provided further, That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government, "excepting documentary and proprietary stamps issued under the Act of June thirteenth, eighteen hundred and ninety-eight, which stamps may be redeemed as hereinbefore authorized, upon presentation prior to the first day of July, nineteen hundred and four."

SEC. 2. That the finding of facts in and the decision of the Commissioner of Internal Revenue upon the merits of any claim presented under or authorized by this Act

Redemption or
refunding the
value of stamps
denoting the pay-
ment of any in-
ternal-revenue
tax.

Limitation to
redemption.

Finding of Com-
missioner final
except in case of
fraud or inathe-
matical mistake.

shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

SEC. 3. That all laws and parts of laws in conflict with any of the provisions of this Act are hereby repealed.

The American West Indies Trading Co. v. U. S. (45 Ct. Cls., 488.)

Regulations No. 27 and Supp. No. 1.

Court of Claims has jurisdiction to enforce payment of a claim allowed by Commissioner and disallowed by Comptroller. (*Kaufman v. United States*, 11 Ct. Cls., 659; 96 U. S., 567; 24 Int. Rev. Rec., 135.) See also Woolner's case (13 Ct. Cls., 355; 24 Int. Rev. Rec., 181).

Authority to issue duplicate stamps for spirits, etc., in place of stamps which have been lost or accidentally destroyed. (Sec. 3315, p. 209.)

Stamps not representing revenue taxes will not be redeemed by the Government. (Letter to Collector Shearer, Oct. 28, 1897; 43 Int. Rev. Rec., 401.)

There is no material difference between the powers of the Commissioner under section 3426, and under section 3220, page 114. Under section 3426 he is to "allow" the claim, which is done either by giving other stamps in lieu of those that have been spoiled, etc., or by repaying the amount or value. Under section 3220 he is to "refund" and "pay back." His payments in both cases must be made through the accounting officers of the Treasury Department, as he is not himself a disbursing officer. (*United States v. Savings Bank* (1881), 104 U. S., 733; 28 Int. Rev. Rec., 87.)

(*United States v. American Tobacco Co.*, 166 U. S., 468.)

Internal-revenue stamps redeemable only when owned and presented for redemption by persons, or their legal representatives, authorized to purchase and use them for the payment of taxes. (T. D. 19224, 1898.)

SEC. 3429 [*as amended by sec. 17, act of Mar. 1, 1879 (20 Stat., 327)*. Supp. R. S., vol. 1, p. 242.]

Penalties for forging, counterfeiting, etc., or fraudulently using or selling stamps, etc.

This section not repealed by the Criminal Code, and remains in force.

Section 8 of the war revenue act (act of June 13, 1898) re-enacted the provisions for purposes of that act (p. 300, Compilation of 1900).

See also section 42, act of August 28, 1894, page 344.

* * * * *

Prima facie evidence of washing, restoring, etc.

And the fact that any adhesive stamp so bought, sold, offered for sale, used, or had in possession as aforesaid, has been washed or restored by removing or altering the canceling or defacing marks thereon, shall be prima-facie proof that such stamp has been once used and removed by the possessor thereof from some paper, instrument, or writing, charged with taxes imposed by law, in violation of the provisions of this section.

Kaufman v. United States, 51 C. C. A., 549, 113 Fed. Rep., 919. (Indictment for having in possession and knowingly offering for sale washed and restored adhesive documentary stamps.)

Counterfeiting imitation wine or compound liquor stamps (sec. 3328, p. 217).

Counterfeiting stamps for fermented liquors (sec. 3346, p. 252).

Using imitation stamps on packages of distilled spirits (sec. 3316a, p. 209).

Counterfeiting obligations or securities of the United States, which includes stamps (secs. 147, 148, Criminal Code, act Mar. 4, 1909, 35 Stat., 1115, p. 420, Appendix).

Dealing in counterfeit securities (sec. 154, Criminal Code, act Mar. 4, 1909, 35 Stat., 1117).

MANUFACTURE OF ARTICLES INTENDED FOR EXPORTATION IN BONDED WAREHOUSES.

SEC. 23. [Act of Aug. 5, 1909 (36 Stat., 88).] That all articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

Any materials used in the manufacture of such goods and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the

Articles manufactured of imported materials intended for exportation.

Manufacturer to give bond.

Manufacture of distilled spirits not permitted in such warehouses.

What is exempt.

Materials can be conveyed to bonded manufacturing warehouse without payment of tax.

No articles to be withdrawn except for shipment.

collector of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided, That the waste material or by-products incident to the processes of manufacture in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected, by law, if such waste or by-products were imported from a foreign country.* All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

Account to be kept by collector.

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturers containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

List to be filed with Secretary of Treasury.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

When articles manufactured can be withdrawn.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom.

Sec. 3433 made applicable.

The provisions of Revised Statutes thirty-four hundred and thirty-three shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

This section is mainly a reproduction of section 15 of the tariff act of July 24, 1897 (30 Stat., 207). See Internal Revenue Compilation of 1900, page 297, amendments being in italics.

Certain articles intended for exportation to be manufactured in bonded warehouses.

SEC. 3433 [as amended by sec. 10, act of Oct. 1, 1890 (26 Stat., 614)]. All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty, and without having a stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class two: *Provided, That such manufacturer¹ shall first give satisfactory bonds to the collector of internal revenue for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half*

Regulations.

Bonds.

¹ This word "manufacturer" is erroneously printed "manufactory" in Revised Statutes, edition of 1878.

of that required by the regulations of the Secretary of the Treasury from persons allowed bonded warehouses. Such goods, when manufactured in such warehouses, may be removed for exportation, under the direction of the proper officer having charge thereof, who shall be designated by the Secretary of the Treasury, without being charged with duty, and without having a stamp affixed thereto.

Any manufacturer of the articles aforesaid, or of any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary of the Treasury may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer.

Articles and materials so to be used may be transferred from any bonded warehouse in which the same may be, under such regulations as the Secretary of the Treasury may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge, as aforesaid, shall be received as a voucher for the manufacture of such articles.

Any materials imported into the United States may, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture.

No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof, as aforesaid, whose certificate, describing the articles by their marks, or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bonds, or return of the amount of foreign import duties.

All labor performed and services rendered under these ^{supervision, etc.} regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

(Regulations of the Secretary of Treasury relating to the establishment of bonded manufacturing warehouses (Customs Regulations 1908.)

(Treasury Department Document 2464, Division of Customs, May 6, 1907.) (T. D. 30458, Mar. 22, 1910; T. D. 30516, Apr. 9, 1910; T. D. 30927, Sept. 15, 1910.)

removing
goods.

Articles and
materials used in
warehouse.

Use of import-
ed materials in
bond.

Withdrawal of spirits by manufacturer of perfumery, etc. [SEC. 3433a.] [Sec. 20, act of Mar. 1, 1879 (20 Stat., 327), as amended by sec. 14, act of May 28, 1880 (21 Stat., 145).]

That under such regulations and requirements as to stamps, bonds, and other security as shall be prescribed by the Commissioner of Internal Revenue, any manufacturer of medicines, preparations, *compositions, perfumeries, cosmetics, cordials, and other liquors*, for export, manufacturing the same in a duly constituted manufacturing warehouse, shall be authorized to withdraw, in original packages, from any distillery-warehouse, so much *distilled spirits* as he may require for the said purpose, without the payment of the internal-revenue tax thereon.

Allowance for leakage. [SEC. 3433b.] [Sec. 15, act of May 28, 1880 (21 Stat., 145).] That where spirits are withdrawn from distillery warehouses for transfer to manufacturing warehouses, under the provisions of this act, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to a manufacturing warehouse.

See Regulations, No. 29, relative to transportation and exportation of distilled spirits in bond free of tax.

SEC. 3434. Superseded by sec. 23 of the act of Aug. 5, 1909, last paragraph but one, p. 334.

DRAWBACK.

Drawback. SEC. 25. [Act of Aug. 5, 1909 (36 Stat., 90).] That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the

Equal to the duty paid, less 1 per cent. articles exported are made in part from domestic materials the imported materials, or the parts of the articles made

from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the

person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

That on the exportation of medicinal or toilet preparations (including perfumery) hereafter manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used: *Provided*, That no other than domestic tax-paid alcohol shall have been used in the manufacture or production of such preparations. Such drawback shall be determined and paid under such rules and regulations, and upon the filing of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation, as the Secretary of the Treasury shall prescribe. * * *

Equal to the
tax on domestic
alcohol used in
medicinal and
toilet prepara-
tions.

Drawback on medicinal and toilet preparations manufactured from tax-paid domestic alcohol.—Regulations, Department Circular No. 39, August 13, 1909. (T. D. 29952.)

Drawback on medicinal and toilet preparations manufactured from tax-paid domestic alcohol.—Amended Regulations. (T. D. 30559, Apr. 22, 1910; T. D. 30831, July 27, 1910.)

Drawback payable from the permanent appropriation carried by section 3689, Revised Statutes. (17 Comp. Dec., 24.)

Free entry of domestic products exported and returned. (Dept. Cir. No. 64, Oct. 29, 1907.)

SEC. 26. [*Reimportation of articles exported in bond or with drawback. Act of Aug. 5, 1909 (36 Stat., 90).*] That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported, *but proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury.*

Duty equal to
the internal-rev-
enue tax to be
paid on articles
reimported on
which no inter-
nal-revenue tax
was paid, or, if
paid, was re-
funded.

This section is mainly a reproduction of section 27 of the tariff act of July 24, 1897 (30 Stat., 210), Internal Revenue Compilation of 1900, page 298, amendment being in italics.

SEC. 3437. Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He shall certify such assessment to the collector, who shall immediately demand payment

Assessment of
stamp taxes
when article is
removed without
being stamped.

of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes.

As to assessments in general, section 3182, page 92.

**Any person who registers, is-
sues, etc., any in-
struments, docu-
ments, etc., with-
out stamp.**

SEC. 13. (*Act June 13, 1898; 30 Stat., 454, as amended by sec. 7, Act of March 2, 1901; 31 Stat., 940.*) That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court; and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect: *Provided*, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds,

**Validating un-
stamped instru-
ments.**

*any instrument, document, or paper of any kind or descrip-
tion whatsoever mentioned in Schedule A of this Act*, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of ten dollars, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum, on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, or instrument, document, or paper of any kind or description whatsoever mentioned in Sched-

**Remission of
penalty in case of
accident, mis-
take, etc.**

ule A of this Act, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued: *And provided further*, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to

defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: *And provided further*, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein, to affix the proper stamp thereto, or, if the original be lost, to a copy thereof. But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

Recording.

Where no collection district is established, instrument may be stamped afterward.

See section 3422, page 329.

Post stamping of instruments or documents of any description mentioned in Schedule A after the expiration of twelve months from date of issue. (T. D. 21539, 1889.)

Collectors can not remit penalty for omission of stamps where the instrument was presented more than twelve months after it was issued. (T. D. 21368, July 10, 1899.)

The action of collector in stamping the instrument under section 13, act of June 13, 1898, cures the defect and operates retroactively. (T. D. 164, June 27, 1900.)

Instruments to be validated may be sent to collector by mail, with affidavit, instead of being personally brought to the collector's office. (T. D. 20696, 1889.)

Stamping and validating instruments. (T. D. 644, T. D. 749.)

There is no authority of law for the sale of documentary stamps except for the purpose and in the manner provided in section 13, supra.

Instrument not admissible as evidence if un-stamped.

SEC. 14. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law:

* * * * *

Instruments requiring stamps are not competent evidence in courts unless stamped. (T. D. 21074, 1889.)

Unstamped instruments inadmissible as evidence in Federal courts. (T. D. 474.)

Not lawful to record instruments until any instrument, paper, or document required by law to be stamped.

SEC. 15. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence.

REFUND OF TAX ON EXPORT BILLS OF LADING.

Export bills of lading.

SEC. 2 [of *An act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the act of June 13, 1898, and for other purposes, approved June 27, 1902.* (32 Stat., 406)]. That the Secretary of the Treasury, under rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, sums paid for documentary stamps used on export bills of lading, such stamps representing taxes which were illegally assessed and collected.

Circular No. 628, July 8, 1902. Rules and regulations for the refunding of amounts paid for documentary stamps used on export bills of lading.

Stamp taxes on export bills of lading unconstitutional. (Fairbank v. U. S., 181 U. S., 283; T. D. 339).

[Extract from an act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1907, and for prior years, and for other purposes, approved Mar. 4, 1907, (34 Stat., 1373; T. D. 1144).]

* * * * *

Export ships' manifests.

To enable the Secretary of the Treasury, under the rules and regulations to be prescribed by him, to audit and refund the sums paid for documentary stamps used on export ships' manifests, such stamps representing taxes which were illegally assessed and collected, one hundred and twenty-five thousand dollars, or so much thereof as may be necessary; said refund to be made

whether said stamp duties were paid under protest or not, and without being subject to any statute of limitations.

* * * * *

DOCUMENTARY STAMPS AFFIXED TO FOREIGN BILLS OF EXCHANGE—REFUNDING.

An Act To provide for refunding stamp taxes paid under the act of June 13, 1898, upon foreign bills of exchange drawn between July 1, 1898, and June 30, 1901, against the value of products of merchandise actually exported to foreign countries and authorizing rebate of duties on anthracite coal imported into the United States from October 6, 1902, to January 15, 1903, and for other purposes, approved February 1, 1909. (35 Stat., 590.)

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the persons or corporations who have, prior to July first, nineteen hundred and four, duly presented their respective claims therefor, the sums paid for documentary stamps used on foreign bills of exchange drawn between July first, eighteen hundred and ninety-eight, and June thirtieth, nineteen hundred and one, against the value of products or merchandise actually exported to foreign countries, such stamps representing taxes which were illegally assessed and collected, said refund to be made whether said stamp taxes were paid under protest or duress or not.

* * * * *

Regulations for the refunding of sums paid for documentary stamps used on foreign bills of exchange drawn between July 1, 1898, and June 30, 1901, against the value of products or merchandise actually exported to foreign countries. February 23, 1909. T. D. 1467.

Extension of time.—The time within which claims may be presented for refunding the sums paid for documentary stamps used on foreign bills of exchange drawn between July 1, 1898, and June 30, 1901, against the value of products or merchandise actually exported to foreign countries, specified in the above act was extended to December 1, 1909. Act of August 5, 1909 (36 Stat., 118, 120). (Urgent deficiency appropriation act.)

An Act Making appropriations to supply deficiencies in appropriations for the fiscal year 1910, and for other purposes, approved June 25, 1910 (36 Stat., 779).

* * * * *

Refund of sums paid for documentary stamps: The time within which claims may be presented for refunding the sums paid for documentary stamps used on foreign bills of exchange drawn between July first, eighteen hundred and ninety-eight, and June thirtieth, nineteen hundred and one, against the value of products or merchandise actually exported to foreign countries, specified

Refund of sums
paid for docu-
mentary stamps
used on foreign
bills of exchange,
extension of time.

in the Act entitled "An Act to provide for refunding stamp taxes paid under the Act of June thirtieth, eighteen hundred and ninety-eight, upon foreign bills of exchange drawn between July first, eighteen hundred and ninety-eight, and June thirtieth, nineteen hundred and one, against the value of products or merchandise actually exported to foreign countries and authorizing rebate of duties on anthracite coal imported into the United States from October sixth, nineteen hundred and two, to January fifteenth, nineteen hundred and three, and for other purposes," approved February first, nineteen hundred and nine, be, and is hereby, extended to December first, nineteen hundred and ten. * * *

Time further extended to December 1, 1911. (Deficiency appropriation act of March 4, 1911.)

CHAPTER FIFTEEN.

PLAYING CARDS.

[Act of Aug. 28, 1894 (28 Stat., 509).]

Sec.

38. Tax of 2 cents on every pack, containing not more than fifty-four cards, whether manufactured, sold, or removed, or in stock of any dealer.
39. Adhesive stamps to be affixed to each package, and canceled by the person using the stamp. Penalty, \$50.
40. Manufacturer to register with the collector of the district. Failure to register, penalty \$50.
41. Stamps to be furnished by the collector to registered manufacturers and importers.
42. Penalty for counterfeiting, defacing, or removing stamp or illegal use of the same.
43. Penalty for removal or sale of playing cards without having stamp affixed. Cards may be removed for export without previous payment of tax.

Sec.

44. Manufacturer removing or reusing any stamp, wrapper, or cover for the purpose of evading the tax liable to a fine of \$50 and forfeiture.
45. Penalty for selling or exposing for sale, removing, or concealing playing cards without having affixed the stamp thereto.
46. Every person who offers or exposes for sale any playing cards, whether of domestic or foreign manufacture, shall be deemed the manufacturer thereof and liable to the tax.
47. Assessment to be made by the commissioner in certain cases.

SEC. 38. [Act of Aug. 28, 1894 (28 Stat., 509).] That on ^{Tax of 2 cents upon every pack} and after the first day of August, eighteen hundred and ninety-four, there shall be levied, collected, and paid, by adhesive stamps, a tax of two cents for and upon every pack of playing cards containing not more than fifty-four cards, manufactured and sold or removed, and also upon every pack in the stock of any dealer on and after that date; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make regulations as to dies and adhesive stamps.

Where packages of playing cards are sent out from the factory duly stamped and are thereafter opened and stamp broken, the cards can not be returned to the packages and sold under a broken stamp; a new stamp must be affixed to each package and duly canceled. (T. D. 21634, 1889; see also U. S. v. Neu-staedter, 149 Fed. Rep., 1010, T. D. 1100.)

Miniature playing cards, intended for use with packages of merchandise, one card to a package, must be put up in packages and properly stamped by the manufacturer. (T. D. 843, Nov. 17, 1904.)

Tax must be paid on every pack of cards intended for use in playing games of skill or chance in lieu of ordinary playing cards. (T. D. 959, Dec. 13, 1905.)

Tax must be paid on every pack of cards even though containing half the ordinary number of cards. (T. D. 1023, July 2, 1906.)

SEC. 39. That in all cases where an adhesive stamp is used for denoting the tax imposed by this Act upon playing cards, except as hereinafter provided, the person using

Affixing and cancellation of stamp.

or affixing the same shall write thereon the initials of his name and the date on which such stamp is attached or used so that it may not again be used. And every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp shall forfeit the sum of fifty dollars. The Commissioner of Internal Revenue is authorized to prescribe such method for the cancellation of stamps as substitute for, or in addition to the method prescribed in this section as he may deem expedient and effectual. And he is authorized, in his discretion, to make the application of such method imperative upon the manufacturers of playing cards.

Manufacturer to register with collector, penalty for failure to do so, \$50.

SEC. 40. That every manufacturer of playing cards shall register with the collector of the district his name or style, place of residence, trade, or business, and the place where such business is to be carried on, and a failure to register as herein provided and required shall subject such person to a penalty of fifty dollars.

Where playing cards are lithographed on large sheets, and sent to another person to be cut and finished, the latter is held to be the manufacturer and required to register and stamp the cards. (T. D. 410, Sept. 21, 1901.)

Stamps to be kept by collectors and furnished to registered manufacturers, importers, and persons having stock on hand.

SEC. 41. That the Commissioner of Internal Revenue shall cause to be prepared, for payment of the tax upon playing cards, suitable stamps denoting the tax thereon. Such stamps shall be furnished to collectors requiring them, and collectors shall, if there be any manufacturers of playing cards within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to such manufacturers as have registered as required by law and to importers of playing cards, who are required to affix the same to imported playing cards, and to persons who are required by law to affix the same to stocks of playing cards on hand when the tax thereon imposed first takes effect. Every collector shall keep an account of the number and denominative values of the stamps sold by him to each manufacturer and to other persons above described.

Decision as to packing and stamping cards when sold in leather, plush, celluloid, or metal cases. (T. D. 19024, 1898.)

Penalty for counterfeiting, defacing or removing stamp, or illegal use of same.

SEC. 42. That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument which shall have been provided or may hereafter be provided, made, or used in pursuance of the provisions of this Act or of any previous provisions of law on the same subjects, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled the impression or any part of the impression of any such stamp, die, plate, or other instrument, as aforesaid, upon any paper, or shall stamp or mark or cause or procure to be stamped or marked any paper

with any such forged or counterfeited stamp, die, or plate, or other instrument or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed or any part thereof; or if any person shall utter, or sell, or expose to sale any paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument which shall have been so provided, made, or used, as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of this Act, or of any previous provisions of law on the same subjects, from any paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or caused to be used, joined, fixed, or placed, to, with, or upon any paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other paper or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall willfully remove or cause to be removed, alter or cause to be altered, the cancelling or defacing marks on any adhesive stamp, with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or willfully sell or buy such washed or restored stamps or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamps, which have been removed from any article, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and willfully aiding, abetting, or assisting in committing any such offense as aforesaid, shall, on conviction thereof, forfeit the said counterfeit, washed, restored, or altered stamps, and the articles upon which they are placed and be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement to hard labor not exceeding five years, or both, at the discretion of the court. And the fact that any adhesive stamp so bought, sold, offered for sale, used, or had in possession as

aforesaid, has been washed or restored by removing or altering the cancelling or defacing marks thereon, shall be prima-facie proof that such stamp has been once used and removed by the possessor thereof from some paper, instrument, or writing charged with taxes imposed by law, in violation of the provisions of this section.

This is a substantial reenactment of section 3429, Revised Statutes, as amended by section 17, act of March 1, 1879, the only change being the substitution of the word "act" for "chapter."

Penalty for removal or sale of playing cards without having stamps affixed.

SEC. 43. That whenever any person makes, prepares, and sells or removes for consumption or sale, playing cards, whether of domestic manufacture or imported, upon which a tax is imposed by law, without affixing thereto an adhesive stamp denoting the tax before mentioned, he shall incur a penalty of fifty dollars for every

Playing cards omitted to affix such stamp: *Provided*, That playing cards may be removed from the place of manufacture for export to a foreign country, without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Concerning the exportation without payment of tax of playing cards, see Regulations, No. 29.

No. 19 Rev., Supplement No. 1. Relative to the exportation of playing cards by parcels post. (T. D. 1668.)

Where a box of playing cards is opened and cards withdrawn, a new stamp must be affixed to the package before its resale. The broken stamp can not protect the package. In sending packs of cards abroad, even as samples, all the provisions of the law and regulations relating to the exportation of playing cards must be complied with, unless tax stamps are affixed to these packages. (T. D. 21669, 1899.)

Penalty for removal or reuse of stamp, wrapper, or cover for the purpose of evading the tax.

SEC. 44. That every manufacturer or maker of playing cards who, after the same are so made, and the particulars hereinbefore required as to stamps have been complied with, takes off, removes, or detaches, or causes, or permits, or suffers to be taken off, or removed, or detached, any stamp, or who uses any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall, for every such article, respectively, in respect of which any such offense is committed, be subject to a penalty of fifty dollars, to be recovered together with the costs thereupon accruing; and every such article or commodity as aforesaid shall also be forfeited.

Penalty for selling or exposing for sale, removing, or concealing playing cards without affixing the stamp.

SEC. 45. That every maker or manufacturer of playing cards who, to evade the tax or duty chargeable thereon, or any part thereof, sells, exposes for sale, sends out, removes, or delivers any playing cards before the duty thereon has been fully paid, by affixing thereon the proper stamp, as provided by law, or who, to evade as aforesaid, hides or conceals, or causes to be hidden or

concealed, or removes or conveys away, or deposits, or causes to be removed or conveyed away from or deposited in any place, any such article or commodity, shall be subject to a penalty of fifty dollars, together with the forfeiture of any such article or commodity.

SEC. 46. That the tax on playing cards shall be paid by the manufacturer thereof. Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon, and all such articles of foreign manufacture shall, in addition to the import duties imposed on the same, be subject to the stamp tax prescribed in this Act.

SEC. 47. That whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He shall certify such assessment to the collector, who shall immediately demand payment of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes.

This is a reenactment, without change, of section 3437, Revised Statutes.

Cards for game called "authors," and the like, differing wholly from ordinary playing cards, are held not to be subject to tax under this act.

It is held that any number of cards in a deck above 54 and not exceeding another of 54 must be regarded, for the purposes of this act, as belonging to another pack, upon which an additional tax of 2 cents must be paid. (40 Int. Rev. Rec., 277.)

CHAPTER SIXTEEN.

BANKS AND BANKERS.

Sec.	See.
3407. Definition of words "bank" and "banker."	[3413b.] Tax on circulation other than national banks used and paid out.
3408 (amended). Tax on circulation of banks and bankers.	[3413c.] Return of amounts and payment of tax.
3409. Taxes, when payable; how calculated.	3414. Banks' and bankers' monthly returns.
3411. Circulation, when exempted from tax.	3415. In default of return, commissioner to estimate, etc.
3412. Tax on notes of persons or State banks used as circulation, etc.	3416. State banks converted into national banks; returns, how made.
3413. Tax on notes of town, city, or municipal corporations paid out by banks, etc.	3417. Certain provisions of this chapter not to apply to national banks.
[3413a.] Tax on certain parties' own notes used for circulation and paid out by them.	

Definition of words "bank" and "banker." SEC. 3407. Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker.

Who are bankers under this section? (*Selden v. Equitable Trust Co.*, 94 U. S., 419; 23 Int. Rev. Rec., 171; *Warren v. Shook*, 91 U. S., 704; 22 Int. Rev. Rec., 77.)

Liability of foreign banks doing business in United States. Suits to recover taxes on capital employed. (*United States v. Bank of Montreal*; 30 Int. Rev. Rec., 310; 21 Fed. Rep., 236.)

A loan and trust company regarded as a bank (*U. S. v. Farmer's L. & T. Co.*, 25 Fed. Cas. No. 15070; 3 Int. Rev. Rec., 62.)

SEC. 3408. There shall be levied, collected, and paid, as hereafter provided:

* * * * *

Tax on circulation. Third. A tax of one-twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional tax of one-sixth of one per

centum each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it. On circulation of branch banks.

Taxes on deposits and capital repealed. Act of March 3, 1883. (22 Stat., 488.) The taxation ceased December 1, 1882. (29 Int. Rev. Rec., 171; 17 Op. Atty. Gen., 539.)

When the plaintiff admits that his business was that of buying and selling stocks for his customers, and that in such business he employed capital, he proves that he was a banker within the statutory definition, and that, within the meaning of section 3408, his capital was employed in the business of banking. (Richmond *v.* Blake (1889), 132 U. S., 592; 36 Int. Rev. Rec., 24.)

The tax on circulation of national banks is paid to the Treasurer of the United States. (Sec. 5214 as amended. See sec. 3417, p. 352.)

Certificates of indebtedness issued by a person or a corporation are not taxable as "circulation" under section 3408, unless intended to circulate as money. (United States *v.* Wilson, 106 U. S., 620.)

What is capital? Mechanics and Farmers' Bank *v.* Townsend, collector, 5 Blatch., 315.)

Merchant's Nat'l Bank *v.* U. S., 42 Ct. Cls., 6.

SEC. 3409. The taxes provided in the preceding section shall be paid semi-annually, on the first day of January and the first day of July; but the same shall be calculated at the rate per month as prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly. Taxes, when payable.
How calculated.

In regard to abating tax against insolvent national, State, and savings banks, see section 22, act of March 1, 1879 (20 Stat., 327), and Supplement, Revised Statutes No. 1, page 243. (Johnson *v.* U. S., 17 Ct. Cls., 157; Jackson *v.* U. S., 20 Ct. Cls., 304.)

SEC. 3411. Whenever the outstanding circulation of any bank, association, corporation, company, or person, is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation. Circulation, when exempted from tax.

Legislation affecting taxes upon the circulation of State banks. (Merchants National Bank *v.* U. S., 42 Ct. Cls., 6.)

SEC. 3412. Every national banking association, State bank, or State banking association, shall pay a tax of ten per centum on the amount of notes of any person, or of Tax on notes of persons or State banks used as circulation, etc.

any State bank or State banking association, used for circulation and paid out by them.

The act of March 3, 1875 (18 Stat., 507), provided that the Secretary of the Treasury be authorized and directed to settle and release any claims for tax on circulation of evidences of indebtedness made against any mining, manufacturing, or other corporations other than against any national banking association, State bank, or banking association, by such corporations paying the tax, without penalty, that shall have accrued thereon since November first, eighteen hundred and seventy-three.

Internal-revenue tax on State banks. (14 Op. Atty. Gen., 98; 16 Int. Rev. Rec., 57.)

The tax of 10 per cent on State bank circulation was designed to drive all such circulation out of existence. (Remark of the court in Head Money Cases. 112 U. S., 580, 596.)

Tax on notes of town, city, or municipal corporations, paid out by banks, etc. SEC. 3413. Every national banking association, State bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation, paid out by them.

This tax not a direct tax and not repugnant to the Constitution. (Veazie Bank *v.* Fenno, 8 Wall., 533; 10 Int. Rev. Rec., 195.)

Above decision cited and approved (National Bank *v.* United States, 101 U. S., 1) where the United States sued a national bank for 10 per cent of the notes of the city of Little Rock paid out.

Tax on circulation of State banks (Deposit Savings Association *v.* Marks, 3 Woods, 553; 23 Int. Rev. Rec., 241, Fed. Cas. No. 3813.)

Section 3583 provided a penalty for issuing notes for a less sum than \$1 intended to circulate as money. (United States *v.* Van Auken (96 U. S., 6 Otto) 366; 24 Int. Rev. Rec., 204; U. S. *v.* Roussopoulos, 95 Fed. Rep., 977.)

Section 3583 has been reproduced in section 178 of the Criminal Code. Act of March 4, 1909. (35 Stat., 1088.)

Ten per cent tax on parties, other than national banks, on their own notes used for circulation, and paid out. [SEC. 3413a.] [Sec. 19 of the act of Feb. 8, 1875 (18 Stat., 311).] That every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of ten per centum on the amount of their own notes used for circulation and paid out by them.

Ten per cent tax on circulation of other than national banks used and paid out. [SEC. 3413b.] [Sec. 20 of the act of Feb. 8, 1875.] That every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of ten per centum on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them.

The main object of the Federal legislation on this subject was to secure for the national currency the exclusive use in the United States as a circulating medium; and this object was sought to be effected by imposing upon all competitive money such a tax as would make its issue unprofitable. (21 Op. Atty. Gen., 560.)

The effect of the act of February 8, 1875, was to extend sections 3412 and 3413, which included only banks and banking associations, to all persons, firms, associations, and corporations. The subject matter of the tax, to wit, "notes used for circulation paid out by them" was the same.

Construction of sections 19 and 20, act of February 8, 1875.
(21 Int. Rev. Rec., 346.)

"Wages certificates" of Philadelphia & Reading Railroad taxable. (16 Op. Atty. Gen., 341; 25 Int. Rev. Rec., 167; see Philadelphia & R. R. Co. v. Pollock, 19 Fed. Rep., 401.)

Tax limited to obligations payable in money. (Hollister v. Zion's Co-operative Mercantile Institution, 111 U. S., 62; 30 Int. Rev. Rec., 111. In re Aldrich, 16 Fed. Rep., 369.)

Glass manufacturers' cases. Warrick and Stanger were glass manufacturers and issued their notes in various amounts, from 5 cents to \$5 each, in payment of wages. These notes circulated as money, and when redeemed were constantly reissued. Every issue of the notes taxable. (United States v. Warrick, 31 Int. Rev. Rec., 327; 25 Fed. Rep., 138.)

A national bank paying out on checks and otherwise notes of a bank chartered in a foreign country is subject to tax of 10 per cent upon the total amount of all notes it has received and used as a circulating medium. (20 Op. Atty. Gen., 534.)

Notes of Canadian Banks (33 Int. Rev. Rec., 405; 34 ibid., 53, 61, and 77; also Treas. Dec. (1899), No. 20507).

Notes of the Dominion of Canada not taxable. (34 Int. Rev. Rec., 61.)

Notes of State banks taxable. (T. D., 784.)

Certified checks of State banks not notes. (T. D., 885.)

Ice tickets not taxable. (19 Op. Atty. Gen., 98.)

Opinion of the Attorney General as to whether pay-roll checks issued by manufacturers and others, and certificates issued by clearing-house associations when used for circulation, are notes within the meaning of section 19, act of February 8, 1875. The tax applies only to promissory notes. (39 Int. Rev. Rec., 398; 20 Op. Atty. Gen., 681.)

Persons, corporations, banks, etc., purchasing from foreigners and returning tourists notes of foreign banks and corporations for resale to persons going abroad, not liable for 10 per cent tax if such notes are not used for circulation in United States. (T. D., 1041, Sept. 24, 1906.)

Clearing-house certificates not notes within the meaning of sec. 3413b. (T. D., 1271, Nov. 14, 1907.)

[SEC. 3413c.] [Sec. 21 of the act of Feb. 8, 1875 (18 Stat., 311).] That the amount of such circulating notes, and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as provided by law for the return and payment of taxes on * * * circulation, imposed by the existing provisions of internal revenue law.

SEC. 3414. A true and complete return of the monthly amount of circulation, * * * as aforesaid, and of the monthly amount of notes of persons, town, city, or municipal corporation, State banks, or State banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June, by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the col-

*Return of
amounts and
payment of tax.*

*Banks' and
bankers' month-
ly returns.*

lector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue.

The words "of deposits and of capital" are omitted in line 2 as obsolete.

In default of return, commissioner to estimate, etc. SEC. 3415. In default of the returns provided in the preceding section, the amount of circulation, * * * and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment, any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred dollars, besides the additional penalty and forfeitures provided in other cases.

The words "deposits, capital" omitted in line 2.
See section 3176, page 89, as to additional penalties.

(U. S. v. N. Y. Guaranty Co., 8 Ben., 269, 27 Fed. Cas., No. 15, 872; 21 Op. Atty. Gen., 564.)

~~State banks converted into national banks; returns, how made.~~ SEC. 3416. Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association.

This section (3416) is practically obsolete.

Certain provisions of this chapter not to apply to the tax on the * * * circulation of banks, and to their national banks.

Act Feb. 18, 1875 (18 Stat., 319). SEC. 3417. The provisions of this chapter, relating to the tax on the * * * circulation of banks, and to their returns, except as contained in sections * thirty-four hundred and eleven, thirty-four hundred and twelve, *thirty-four hundred and thirteen*, and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen, and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of Title "National Banks."

CHAPTER SEVENTEEN.

PROVISIONS COMMON TO SEVERAL OBJECTS OF TAXATION.

Sec.

- 3443. Fraudulent claims for drawback; penalty.
- 3444. Collector's monthly account of articles in bonded warehouses and articles exported.
- 3445. Stamps, instruments for attaching, canceling, etc.
- 3446 (amended). Power to alter or change stamps, marks, labels, etc.
- [3446a.] Stamps to be sent to officers by mail, registered.
- 3447. Where mode of assessing or collecting tax is not provided for; regulations authorized.
- 3448. Internal-revenue laws, when coextensive with jurisdiction of United States.
- 3449. Removing liquors under other than the proper name known to the trade; penalty.
- 3450. Removing or concealing articles with intent to defraud; forfeiture and penalty.
- 3451. Fraudulently executing documents; penalty.
- 3452. Having property in possession with intent to sell in fraud of law or to evade taxes; penalty.
- 3453. Property found in possession in fraud of revenue laws; forfeiture.
- 3454. Sales to evade tax; forfeiture.
- 3455. Disposing of or receiving or making empty stamped packages; penalties.
- 3456. Penalty and forfeiture by distillers, etc., for omitting things required and for doing things forbidden.

Sec.

- 3457. Packages included in forfeiture of goods.
- 3458. Goods seized may be delivered to marshal before process issues, etc.
- 3459. Bonding of goods seized.
- 3460. Proceedings on seizure of goods valued at \$500 or less.
- 3461. Application for remission.
- 3462. Search warrants.
- 3463 and [3463a]. Informers' rewards. Appropriation for detecting frauds.
- 3464. Purchasing for the Government goods subject to tax.
- 3465. Construction of act March 2, 1833. Act of August 13, 1894, amended. Guarantee corporation may be accepted as sole surety on recognizances, stipulations, bonds, and undertakings.
- Section 5 of the legislative, executive, and judicial appropriation act of March 2, 1895. Relative to official bonds.
- Act of August 8, 1888. Notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials. Limitation of time within which suits shall be brought against sureties.
- Section 31, act of June 13, 1898. Former laws made applicable.
- Legislation relative to Hawaii, Porto Rico, and the Philippines.

SEC. 3441. Relative to drawback on fermented liquors; repealed by act of June 18, 1890 (26 Stat., 162). See page 255.

SEC. 3442. Obsolete by repeal of section 3441.

SEC. 3443. Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal duty shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid as aforesaid, he shall forfeit triple the amount wrongfully or fraudulently claimed

or sought to be obtained, or the sum of five hundred dollars, at the election of the Secretary of the Treasury.

Section 3330, page 220, provides a penalty in the case of fraudulent claims for drawback on spirits, and section 25, act of February 8, 1875 (sec. [3386a], p. 277), in the case of fraudulent claims for drawback on tobacco.

Drawback is now allowed on distilled spirits, tobacco, snuff, cigars, cigarettes, and stills.

No drawback is allowed upon spirits bottled in bond, page 237.

Drawback allowed on articles shipped to the Philippines. (Act of Mar. 8, 1902, p. 375.)

Drawback on stills, page 134.

Drawback on medicinal and toilet preparations manufactured from tax-paid alcohol, page 337.

Collector's monthly account of articles in house in which distilled spirits, or other articles, are stored bonded ware in bond, shall render a monthly account of all such articles houses and articles exported.

SEC. 3444. Every collector who has charge of any warehouse in his district and under his control, and shall be charged with all the articles which may have been deposited or received under the provisions of law, in any warehouse in his district and under his control, and shall be credited with all such articles shown to have been removed therefrom according to law, including transfers to other collectors and to his successor in office, and also whatever allowances may have been made in accordance with law to any owner of such goods or articles for leakage or other losses.

And every collector from whose district any distilled spirits, tobacco, snuff, or cigars are shipped in bond, under the provisions of this Title, shall render a monthly account of the same to the Commissioner of Internal Revenue, showing the amount of each article produced and shipped in bond, the amounts of which the exportation is completed according to law, and the amount remaining unaccounted for at the end of each month; also any excesses or deficiencies on the amounts originally reported as shipped.

Changes of stamps, instruments for attaching, protecting, and canceling. SEC. 3445. The Commissioner of Internal Revenue may make such change in stamps, and may prescribe such instruments or other means for attaching, protecting, and canceling stamps, for tobacco, snuff, cigars, distilled spirits, and fermented liquors, or either of them, as he and the Secretary of the Treasury shall approve; such instruments to be furnished by the United States to the person using the stamps to be affixed therewith, under such regulations as the Commissioner of Internal Revenue may prescribe.

Regulations under this section have the force of law. (15 Op. Atty. Gen., 191.)

Rubber stamps may be used instead of stencils for canceling strip stamps on cigar boxes. (Circular letter, Oct. 15, 1897; 43 Int. Rev. Rec., 385.)

SEC. 3446 [*as amended by sec. 18, act of Mar. 1, 1879 (20 Stat., 327)*]. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may establish and, from time to time, alter or change the form, style, character, material, and device of any stamp, mark, or label used under any provision of the laws relating to internal revenue. Such stamps shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as he, with the approval of the Secretary of the Treasury, may prescribe; and he is hereby authorized and empowered to make, with the approval of the Secretary of the Treasury, all needful regulations relating thereto; and all pains, penalties, fines, and forfeitures now provided by law relating to internal-revenue stamps shall apply to and have full force and effect in relation to any and all stamps which may or shall be so established by the Commissioner of Internal Revenue:

Provided, Such stamps or device or instrument or means of removal or obliteration, shall entail no additional expense upon the persons required to affix or use the same.

See section 321, page 45, as to authority of commissioner to provide stamps, etc.

Stamps for special taxes, section 3238, page 128; for distilled spirits, section 3312, page 207; for imitation wines, section 3328, page 217; for fermented liquors, section 3341, page 249; for tobacco, section 3369, page 267; for cigars, section 3395, page 285; for oleomargarine, section 8, act of August 2, 1886, amended, page 295. See appropriate sections for other articles.

The portraits of living persons upon internal-revenue stamps not prohibited by section 3576, R. S., but their exclusion therefrom is in consonance with its spirit. (14 Op. Atty. Gen., 528.)

Hamilton-Brooks cigar stamp. (16 Op. Atty. Gen., 444; 26 Int. Rev. Rec., 33; 17 Op. Atty. Gen., 111.)

Use of the Hunter stamp. (15 Op. Atty. Gen., 191.)

Fletcher's invention. (11 Ct. Cls., 748.)

Alleged infringement of patent. (Fletcher v. Blake, 131 U. S., excvii appendix; 27 Int. Rev. Rec., 6. Hollister v. Benedict & Burnham Manufacturing Co., 113 U. S., 59; 31 Int. Rev. Rec., 30. Solomons v. United States, 22 Ct. Cls., 335.)

Stamps for spirits, beer, tobacco, snuff, and cigars are not legitimate articles of traffic. (11 Int. Rev. Rec., 57; Amer. Brewing Co. v. U. S., 33 Ct. Cls., 351.)

[SEC. 3446a.] [Extract from legislative, executive, and judicial appropriation act approved Aug. 15, 1876 (19 Stat., 152).] * * * And hereafter the transmission of internal revenue stamps to the officers of the internal revenue service shall be made through the mails of the United States in registered packages. * * *

Internal-revenue stamps may be mailed to collectors and stamp deputy collectors or returned by them to the commissioner in full packages without regard to the 4-pound limit of weight. (T. D. 18947, 1898.)

SEC. 3447. Whenever the mode or time of assessing or collecting any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the

Power to establish, alter, or change internal-revenue stamps, marks, or labels, etc.

Penalties.

Expense.

Stamps to be sent to officers by mail, registered.

Where mode of assessing or collecting any tax is not provided for; regulations.

same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

Spreckels S. R. Co. v. McClain (113 Fed. Rep., 244; T. D. 462; 109 Fed. Rep., 76; T. D. 350).

Internal - revenue laws, when coextensive with jurisdiction of United States.

SEC. 3448. The internal-revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection-district or not.

Indian Territory: The Cherokee Tobacco (Boudinot's factory) (11 Wall., 616; 14 Int. Rev. Rec., 11).

In this case the Supreme Court ruled that the Indian Territory was included in the general terms of this section, notwithstanding any prior treaty, and that the provisions of the internal-revenue law as to distilled spirits, fermented liquors, and tobacco were applicable therein.

Liquor dealers in Indian Territory. (22 Int. Rev. Rec., 109; 23 ibid., 125. *United States v. Forty-three Gallons of Whisky*; 108 U. S., 491; 29 Int. Rev. Rec., 188.)

Special-tax stamps, being only receipts for taxes paid, may be issued by the collector of internal revenue, notwithstanding acts of Congress relative to sale of liquors in the Indian Territory. (T. D. 18911, 1898.)

Section 2141, Revised Statutes, provides as follows: Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits shall be liable to a penalty of one thousand dollars; and the superintendent of Indian affairs, Indian agent, or subagent, within the limit of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

The Attorney General, in an opinion rendered October 4, 1898, held that the establishment of a distillery in the Indian Territory, notwithstanding it was on land to which the Indian title was extinct, would be in contravention of law. (T. D. 20162, 1898; 22 Op. Atty. Gen., 232.)

Oklahoma and Indian Territory to form a State government. Act June 16, 1906. (34 Stat., 267.) Oklahoma admitted as a State November 16, 1907. (35 Stat., 2161.)

Alaska added to Oregon district December 27, 1872.

Alaska, case of Savaloff (17 Int. Rev. Rec., 20); case of Stephens (28 ibid., 194).

The payment of the special tax is no defense to a prosecution for illegally selling liquors in Alaska. (*United States v. Ash*, 75 Fed. Rep., 651; *Endleman v. United States*, 86 Fed. Rep., 456.)

An act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said district. (Act of March 3, 1899, 30 Stat., 1253.)

Section 477 provides: "That nothing in this act shall in any way repeal, conflict, or interfere with the public general laws of the United States imposing taxes on the manufacture and sale of intoxicating liquors for the purpose of revenue and known as the 'internal-revenue laws.'"

The act of June 6, 1900, (31 Stat., 321), makes further provision for civil government in Alaska.

Philippine Islands (24 Op. Atty. Gen., 120). See p. 375.

Removing any liquors or wines under other than trade names; penalty.

SEC. 3449. Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the con-

tents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars.

Construction of this section in case of shipment of spirits under a false designation. (Attorney General Taft's letter to Secretary of the Treasury; 22 Int. Rev. Rec., 261.)

Section 3449 was passed to prevent frauds on the revenue and to assist revenue officers in discovering such frauds. It has no reference to marks or brands placed upon packages by Government officers. (*Woolner & Co. v. Rennick*, (1908), 170 Fed. Rep., 662; T. D. 1425.)

When spirituous liquors contained in bottles are packed in barrels and shipped and the barrels are marked "groceries," such shipment is a violation of this section. (*United States v. Liquor Dealers' Supply Co.*, 156 Fed. Rep., 219; T. D. 1292.)

When spirituous liquors contained in bottles are packed in barrels and shipped, and the barrels are not marked, but described in bill of lading as "drugs," such shipment is a violation of section 3449. The matter of intent is immaterial. (Charge to the jury in *United States v. Robert Stevenson & Co.*; T. D. 1644.)

The requirements of this statute can not be limited to distillers, manufacturers, and rectifiers, as its language covers all persons who ship, transport, or remove liquors or wines. (*United States v. Camp et al.*, Northern District of California (1898), 89 Fed. Rep., 697.) See 133 Fed. Rep. 910 (T. D. 844) for later decision of Cir. Ct. of appeals.

Section 3449 not unconstitutional because in some cases it incidentally acts as a protection to trade-marks. (*United States v. Loeb* (1892), 49 Fed. Rep., 636; 38 Int. Rev. Rec., 78.)

The term "package," as used in section 3449, includes every box, barrel, or other receptacle into which distilled spirits have been placed for shipment or removal, either in quantity or in separate small packages, as bottles or jugs. (*United States v. 132 Packages of Spirituous Liquors and Wines et al.* (1896), circuit court of appeals, 76 Fed. Rep., 364; 42 Int. Rev. Rec., 438.)

Packages of less than 5 gallons marked "Glass, this side up with care." Section 3449 does not apply. (*United States v. Twenty Boxes of Corn Liquor*, 123 Fed. Rep., 135; 133 ibid., 910; T. D. 844.)

"J. D. Iler's Rochester Tonic." (*United States v. J. D. Iler Brewing Co.*, 121 Fed. Rep., 41; T. D. 630.)

Shipping liquors under other than name as known to the trade. (T. D. 956; T. D. 1035.)

United States v. Sandefuhr (145 Fed. Rep., 49).

See provisions of the criminal code as to marking spirits. Appendix, p. 421.

SEC. 3450. Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited.

Removing or
concealing arti-
cles with intent
to defraud United
States of tax.

Penalty and forfeiture. And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than five hundred dollars. And all boilers, stills, or other vessels, tools and implements, used in distilling or rectifying, and forfeited under any of the provisions of this Title, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law.

Spirits forfeited; how disposed of. And all spirits or spirituous liquors which may be forfeited under the provisions of this Title, unless herein otherwise provided, shall be disposed of by the Commissioner of Internal Revenue as the Secretary of the Treasury may direct.

An unofficial person may seize property as forfeited to the United States, and the Government, if it chooses, may adopt the seizure and make it the basis of legal proceedings.

A proceeding by the Government to enforce the forfeiture by legal process is a confirmation of the seizure. (13 Op. Atty. Gen., 253, 256; *The Caledonian*, 4 Wheat., 99, 102; *Gelston v. Hoyt*, 16 Wheat., 245, 310; *Taylor v. United States*, 3 How., 197, 204.)

Circular No. 224, relative to destruction of spirits. (26 Int. Rev. Rec., 105.)

Rights of mortgagee. (*United States v. Two Barrels Whisky* (1899, C. C. A.) 96 Fed. Rep., 479; *United States v. One Bay Horse, etc.*, 128 ibid., 207.)

In statutory offenses a guilty intent is not necessarily an ingredient. (*United States v. One Black Horse*, 129 Fed. Rep., 167.)

The illegal acts of agents or employees work forfeiture of property. (*Bush v. U. S.*, 24 Fed. Rep., 917; 31 Int. Rev. Rec., 305; *U. S. v. Stowell*, 133 U. S., 1; 36 Int. Rev. Rec., 30; *U. S. v. 7 Barrels Distilled Oil*, 6 Blatch., 174; Fed. Cas. No. 16253.)

In *Pilcher v. Faircloth* (135 Ala., 311), action to recover for the conversion of two mules seized and sold by the collector, the supreme court of Alabama held that the forfeiture took effect immediately upon the commission of the act, and the defendant by purchase at the collector's sale acquired title.

Mules and a wagon, hired for the purpose of hauling produce to market, are forfeited when employed by the bailee in the removal of spirits in violation of law, although the owner had no information that his property would be employed in an unlawful purpose. (*United States v. Two Bay Mules*, 36 Fed. Rep., 84.)

See notes under sec. 3453.

Fraudulently executing documents required by internal-revenue laws; penalty. SEC. 3451. Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal-revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a

term not less than one year nor more than five years; and the property to which such false or fraudulent instrument relates shall be forfeited.

See section 28, act March 4, 1909 (Criminal Code), p. 420, in appendix, penalties for forging, altering, counterfeiting affidavits, bonds, public records, etc.

Fraudulent Form 122 forfeits spirits to which it relates. (Thacher, claimant of 102 packages of distilled spirits, *v. The United States*, 103 U. S. (13 Otto), 679, affirming 15 Blatch., 15; 27 Int. Rev. Rec., 144.)

SEC. 3452. Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal-revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of five hundred dollars or not less than double the amount of taxes fraudulently attempted to be evaded.

U. S. v. Grotenkemper (2 Bond, 140, 26 Fed. Cas., 45.)

SEC. 3453. All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made.

Personal property in the same inclosure with an illicit still. (*United States v. Quantity of Rags*, 7 Int. Rev. Rec., 123; 27 Fed. Cas., 16103.)

Property liable to forfeiture without any regard to the misconduct of owner. (*United States v. Distillery at Spring Valley*, 11 Blatch., 255; 25 Fed. Cas., 854; 18 Int. Rev. Rec., 59, and decisions cited under sec. 3281, p. 173.)

Mixture or confusion of fraud spirits with others. (The Distilled Spirits (Harrington's), 11 Wall., 356; 13 Int. Rev. Rec., 193; 10 ibid., 164. *United States v. One Still*, 5 Blatch., 403; 5 Int. Rev. Rec., 189.)

An acquittal in a criminal prosecution is a bar to a proceeding in rem when the offense is the same. (*Coffee v. United States*, 116 U. S., 436; 32 Int. Rev. Rec., 38.)

The United States is not estopped by verdict of acquittal from proceeding in a civil action for the tax. (*United States v. Schneider*, 35 Fed. Rep., 107.)

Acquittal bar to civil action for penalty. (*United States v. Seattle Brewing & Malting Co.*, 135 Fed. Rep., 597.)

Oleomargarine. (*United States v. One Bay Horse*, 128 Fed. Rep., 207.)

Burden of proof: There is a distinction between civil and criminal cases in respect to the degree or quantum of evidence necessary to justify the jury in finding their verdict. In civil cases their duty is to find for the party in whose favor it preponderates. Innocence is presumed in a criminal case until the contrary is proven; but the presumption of innocence as probative evidence is not applicable in civil cases nor in revenue seizures. (*Lilenthal's Tobacco v. United States*, 97 U. S., 237; 24 Int. Rev. Rec., 60.)

Proceedings for forfeiture are civil, not criminal proceedings. (*United States v. Three Tons of Coal*, 21 Int. Rev. Rec., 251.)

The expression "in fraud of the internal-revenue laws" means in violation of the internal-revenue laws. (*A Quantity of Tobacco and Cigars*, 5 Ben., 407, Fed. Cas. No. 11500.)

Reports of seizure on Form 117 to be made promptly. (T. D. 147.)

Seizures not to be made on suspicion (T. D. 1543).
Notice to shippers (T. D. 585).

Sales to evade tax: forfeiture. SEC. 3454. Whenever any person who is liable to pay any tax upon any goods, wares, or merchandise, sells or causes or allows the same to be sold before the tax is paid to which said property is liable, with intent to avoid such tax, or in fraud of the internal-revenue laws, any debt contracted in such sales, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court. And if such goods, wares, or merchandise have been paid for, in whole or in part, the sum so paid shall be deemed forfeited, and any person who shall sue for the same in an action of debt shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States.

Disposing of or receiving empty stamped packages, etc.: penalties. SEC. 3455. Whenever any person sells, gives, purchases, or receives any box, barrel, bag, vessel, package, wrapper, cover, or envelope of any kind, stamped, branded, or marked in any way so as to show that the contents or intended contents thereof have been duly inspected, or that the tax thereon has been paid, or that any provision of the internal-revenue laws has been complied with, whether such stamping, branding, or marking may have been a duly authorized act or may be false and counterfeit, or otherwise without authority of law, said box, barrel, bag, vessel, package, wrapper, cover, or envelope being empty, or containing anything else than the contents which were therein when said articles had been so lawfully stamped, branded, or marked by an officer of the revenue, he shall be liable to a penalty of not less than fifty nor more than five hundred dollars. And every person who makes, manufactures, or produces any box, barrel, bag, vessel, package, wrapper, cover, or envelope, stamped, branded, or marked, as above described, or stamps,

Manufacturing, etc., such packages.

brands, or marks the same, as hereinbefore recited, shall be liable to penalty as before provided in this section. And every person who violates the foregoing provisions of this section, with intent to defraud the revenue, or to defraud any person, shall be liable to a fine of not less than one thousand nor more than five thousand dollars, or to imprisonment for not less than six months nor more than five years, or to both, at the discretion of the court. And all articles sold, given, purchased, received, made, manufactured, produced, branded, stamped, or marked in violation of the provisions of this section, and all their contents, shall be forfeited to the United States.

Verbal error corrected.

A person can not buy a package containing distilled spirits, already stamped and branded, and take out the contents and put in other distilled spirits of a lower proof, without rendering the property subject to forfeiture. (*United States v. Nine Casks and Packages of Distilled Spirits*, 51 Fed. Rep., 191.)

Empty cigar boxes. (T. D. 873.)

The phrase "anything else" in section 3455 does not include substances that are not in themselves taxable. (*U. S. v. A. Graf Distilling Co.*, 208 U. S., 198; T. D. 1304.) For decisions in lower courts see 129 Fed. Rep., 329 and 125 Fed. Rep., 52, T. D. 701.

Proceedings for forfeiture—evidence. *Corbin & Co. v. United States*. (181 Fed. Rep., 296.)

SEC. 3456. If any distiller, rectifier, wholesale liquor-dealer, or manufacturer of tobacco or cigars, shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this Title prohibited, if there be no specific penalty or punishment imposed by any other section of this Title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be a distiller, rectifier, or wholesale liquor dealer, all distilled spirits or liquors owned by him or in which he has any interest as owner, and if he be a manufacturer of tobacco or cigars, all tobacco or cigars found in his manufactory shall be forfeited to the United States.

Penalty and
forfeiture by dis-
tillers, rectifiers,
wholesale liquor
dealers and man-
ufacturers of to-
bacco or cigars,
for omitting
things required,
and for doing
things forbidden.

United States v. Two hundred Barrels Whisky (95 U. S., 571; 24 Int. Rev. Rec., 3). *United States v. One hundred and thirty-three Casks of Distilled Spirits* (11 Int. Rev. Rec., 191). *United States v. One thousand four hundred and twelve Gallons Distilled Spirits* (10 Blatch., 428; 17 Int. Rev. Rec., 86). *United States v. One Rectifying Establishment* (11 Int. Rev. Rec., 45; Fed. Cas. No. 15952).

This section was not intended to cumulate or increase punishment. (*United States v. Four thousand eight hundred Gallons of Spirits*, 13 Int. Rev. Rec., 52.)

Intent. (*Felton v. United States*, 96 U. S., 699; 24 Int. Rev. Rec., 252.)

Meaning of the words "knowingly and willfully." (A Quantity of Distilled Spirits, etc., 3 Ben. 552, Fed. Cas. No. 11495; 10 Int. Rev. Rec., 206; 11 ibid., 3.)

Act Feb. 27,
1877. (19 Stat.,
240.)

Verbal error
corrected.

Package included in forfeiture of goods.

SEC. 3457. In every case where any goods or commodities are forfeited under any internal-revenue law, all casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained such goods or commodities, respectively, shall be forfeited.

Goods seized may be delivered to marshal before process issues.

SEC. 3458. Any goods, wares, merchandise, articles, or objects which may be seized, under the provisions of section thirty-four hundred and fifty-three, by any collector or deputy collector, may, at the option of the collector, be delivered to the marshal of the district, and remain in the care and custody and under the control of said marshal, until he shall obtain possession by process of law. And

Cost of seizure. the cost of seizure made before process issues shall be tax-

Whisky, tobacco, etc., sold on restraint, forfeit-
ure, etc., marks, brands, and stamps or marks of whatever kind to be placed thereon, stamps to be affixed by officer.

shall be sold upon restraint, forfeiture, or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks, so required, and deduct the expense thereof from the proceeds of such sale.

Stamping tobacco, snuff, or cigars sold under restraint or forfeited. (Sec. 3369, p. 267.)

Destruction of forfeited tobacco, snuff, or cigars which will not sell for a price equal to the tax. (Sec. 3369, p. 267.)

Provision where spirits will not sell for price equal to tax. (Secs. 3334, p. 226, 3450, p. 357; Regulations No. 2, revised, p. 47.)

Property sold under restraint. (Sec. 3191, p. 99.)

Collectors should be careful to render to the clerk of the court their bill of costs as soon as the marshal takes possession of the property, or very soon thereafter, which expenses are payable from appropriation "Salaries, fees, and expenses of marshals, United States courts." (XIII Comp. Dec., 316.)

Payment of expenses of collectors in seizure cases: Expenses incurred by a collector of internal revenue in the care of property seized for violation of law and turned over to the marshal under the provisions of section 3458 are payable from the appropriation for "Miscellaneous expenses, Internal-Revenue Service." (T. D. 1506, June 8, 1909.)

Payment of expenses of marshals: Expenses incurred by a marshal in the care of property turned over to him by a collector under the provisions of section 3458, when taxed by the court, are payable from the appropriation for "Salaries, fees, and expenses of marshals, United States courts," even though all proceedings be compromised under the provisions of sections 3229 and 3230, Revised Statutes. (T. D. 1507, June 8, 1909.)

The provision allowing the court to tax in favor of the collector the costs of seizure made before process issues may be properly construed to cover any necessary expenses of watching property seized by a collector for such time as shall necessarily elapse between the seizure by the collector and the seizure by the marshal under process; but it can not be extended to cover a charge for custody during an unreasonable delay. (Fifteen Empty Barrels, etc. (1867), 1 Ben., 125.)

Bonding perishable goods seized, etc.

SEC. 3459. When any property which is seized under the foregoing provisions of section thirty-four hundred and fifty-three is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the owner thereof, or the marshal of the

district, may apply to the collector of the district to examine it; and if, in the opinion of the said collector, it shall be necessary that the said property should be sold to prevent such waste or expense, he shall appraise the same; and thereupon the owner shall have said property returned to him upon giving bond in such form as may be prescribed by the Commissioner of Internal Revenue, and in an amount equal to the appraised value, with such sureties as the collector shall deem good and sufficient, to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the collector, marshal, or otherwise, as he may be ordered and directed by the court, which bond shall be filed by said collector with the United States district attorney for the district in which said proceedings in rem may be commenced: *Provided*, That in case said bond shall have been executed and the property returned before seizure thereof by virtue of the process aforesaid, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid. But if said owner shall neglect or refuse to give said bond, the collector shall issue to a deputy collector or to the marshal aforesaid an order to sell the same; and the deputy collector or marshal shall thereupon advertise and sell the said property at public auction in the same manner as goods may be sold on final execution in said district; and the proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court aforesaid, to abide its final order, decree, or judgment.

Sale for want
of bond.

See section 3331, page 224, as to release of distilleries.

Form of bond authorized by section 3459 for release of property seized under section 3453, Revised Statutes. (Regulations No. 12, revised, p. 50.)

United States v. Ninety-two Barrels (27 Fed. Cas. No. 15892; 8 Blatch., 480). *United States v. 17 Empty Barrels* (3 Dill., 285; 27 Fed. Cas. No. 16255; 21 Int. Rev. Rec., 391). *United States v. A lot of Leaf Tobacco* (2 Ben., 76; Fed. Cas. No. 15627; 6 Int. Rev. Rec., 222). *United States v. 59,650 Cigars* (T. D., 992).

SEC. 3460. In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeiture under any provision of the internal-revenue laws, which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

First. He shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by him, who shall be respectable and disinterested citizens of the

Proceedings on
seizure of goods
valued at \$500 or
less.

List and ap-
praisement.

United States residing within the collection-district wherein the seizure was made. Said list and appraisement shall be properly attested by the said collector or deputy collector and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar and fifty cents a day, to be paid in the manner provided by law for other necessary charges of collectors.

Notice of seizure. Second. If the said goods are found by the said appraisers to be of the value of five hundred dollars or less, the said collector or deputy collector shall publish a notice for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice.

Claim to be filed. Third. Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute

Bond of claimant. a bond to the United States in the penal sum of two hundred and fifty dollars, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the collector or deputy collector, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States district attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law.

Sale of goods and disposal of proceeds. Fourth. If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction, and, after deducting the expense of appraisement and sale, he shall deposit the proceeds to the credit of the Secretary of the Treasury.

Instructions as to the mode of procedure under this section. (Regulations, No. 2, revised, p. 45.)

Instructions as to disposition of property seized. (Cir. No. 580; T. D. 209.)

Instructions in regard to reports. (T. D. 623.)

The gross amount of proceeds of sale to be covered into the Treasury. (Act of May 27, 1908, 35 Stat., 325, p. 108; T. D. 1373; Cir. 725, June 5, 1908.)

Provision relative to spirits which will not sell for price equal to the tax. (Sec. 3334, p. 226.)

Application for remission and return of proceeds; distribution.

SEC. 3461. Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding section, any person claiming to be interested in the property sold may apply to the Secretary of the Treasury for a remission of the forfeiture thereof, or of any part thereof,

and a restoration of the proceeds of the sale; and the said Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it shall be satisfactorily shown that the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property. If no application for such restoration is made within one year, as hereinbefore prescribed, the Secretary of the Treasury shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court.

SEC. 3462. The several judges of the circuit and district courts of the United States, and commissioners of the circuit courts, may, within their respective jurisdictions, issue a search-warrant, authorizing any internal-revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

Search warrants.

24 Op. Atty. Gen., 685.

Although the search warrant may have been improvidently issued, the evidence obtained by means of the search is not inadmissible. (*Ripper v. United States*, T. D. 1609.)

SEC. 3463. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

Detection and punishment of frauds.

Moieties repealed, section 39, act of June 6, 1872. (17 Stat., 256.) "Sanborn contract," under act of May 8, 1872 (17 Stat., 69), was repealed June 22, 1874, (18 Stat., 192.)

Construction of offer of \$300 reward and Circular No. 99 and its revisions. (15 Op. Atty. Gen., 88 (Pierpont); *Williams v. United States*, 12 Ct. Cls., 193; *Briggs v. United States*, 15 Ct. Cls., 48.)

As to marshal or deputy marshal receiving reward. A contract to pay a reward for the arrest of a felon is valid if not made with a public officer or employee on whom the law imposes the duty of making such arrest, or with some officer or employee otherwise excluded from the right to receive such reward. (Hutsel Amarine's case, 2 Lawrence Dec., 545; 28 Int. Rev. Rec., 21.)

The payment of a reward to an officer for services within the scope of his official duties is contrary to public policy. (*Matthews & Gunn v. United States*, 32 Ct. Cls., 123.)

The authority conferred upon the Attorney General by the act of March 3, 1891 (26 Stat., 985) to offer rewards for the detection and prosecution of crimes against the United States, pre-

liminary to the indictment, empowered him to authorize the marshal of the northern district of Florida to offer a reward for the arrest and delivery of a person accused of the committal of a crime against the United States in that district, the reward to be paid upon conviction; and a deputy marshal, who had complied with all the conditions of the offer and of the statute, was entitled to receive the amount of the reward offered. (*United States v. Matthews*, 173 U. S., 381.)

Eager v. U. S., 35 Ct. Cls., 447.

Effect of repeal of act allowing moiety on informer's claim for information given prior to repeal. (*United States v. Connor*, 138 U. S., 61.)

Rewards for information leading to the detection and punishment of persons violating internal-revenue laws. (Circular, Int. Rev., No. 99, 4th revision, Treas. Dec. (1899), No. 21856.) Regulations, No. 12, revised, page 51.

Commissioner authorized to offer a reward for the recovery of taxes evaded. (15 Op. Atty. Gen., 133; 22 Int. Rev. Rec., 229.)

Authority of Commissioner to bind the Government by promising to pay for information. Informer who receives less than 10 per cent can not recover the difference in the Court of Claims. (*Green v. United States*, 17 Ct. Cls., 238; 28 Int. Rev. Rec., 208.)

Right of Commissioner and Secretary to fix amount of reward. (*E. D. Crane v. United States*, 34 Int. Rev. Rec., 414; 23 Ct. Cls., 94.)

In the matter of the authority of persons employed under section 3463 to visit, enter into, and examine distilleries, etc. (4 Lawrence Dec., 60.)

[SEC. 3463a.] [*Extract from appropriation bill (sundry civil) for the fiscal year ending June 30, 1911, act of June 25, 1910 (36 Stat., 713).*] Punishment for violations of internal-revenue laws: For detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws or conniving at the same, including payments for information and detection of such violations, one hundred and fifty thousand dollars; and the Commissioner of Internal Revenue shall make a detailed statement to

A ppropriation for detecting frauds. to Congress once in each year as to how he has expended this sum, and also a detailed statement of all miscellaneous expenditures in the Bureau of Internal Revenue for which appropriation is made.

Statement to Congress.

The same provision is contained in the act of March 4, 1911. (Sundry civil appropriation act for 1912.)

A provision similar to the above respecting statements to Congress has been in appropriation bills as to the fraud fund since the act of June 19, 1878 (20 Stat., 187), and as to miscellaneous expenses of the Bureau since the act of June 15, 1880 (21 Stat., 20).

The use of words "once in each year," in the second part of the paragraph, would seem to indicate a permanent character.

The concluding part of the paragraph relates apparently only to the miscellaneous expenditures for the particular year for which appropriation is made by this act. (Note in Supp. R. S., vol. 2, p. 121.)

It is the right of every private citizen of the United States to inform a marshal of the United States, or his deputy, of a violation of the internal-revenue laws; this right is secured by the Constitution; and a conspiracy to injure, oppress, threaten, or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it, is punishable under sec. 5508, Revised Statutes (superseded by sec. 19 Criminal Code, act Mar. 4, 1909). (In re Quarles and Butler, 158 U. S., 532.)

In *Worthington v. Scribner* (109 Mass., 487) the principle was laid down that it is the duty of every citizen to communicate to his Government any information which he has of the commission of an offense against its laws; and that a court of justice will not compel or allow such information to be disclosed, either by the subordinate officer to whom it is given, by the informer himself, or by any other person, without the permission of the Government, the evidence being excluded not for the protection of the witness or of the party in the particular case, but upon general grounds of public policy, because of the confidential nature of such communications. The authorities are collected and reviewed in that case. (*Vogel v. Gruaz*, 110 U. S., 311.)

Compensation of possemen. (T. D. 1513.)

SEC. 3464. The privilege of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, which now does or hereafter shall exist by provision of law, shall be extended, under such regulations as the Secretary of the Treasury may prescribe, to all articles of domestic production which are subject to tax by the provisions of this Title.

26 Op. Atty. Gen., 449.

The provisions of this section (3464 R. S.) were not repealed by the tariff act of October 1, 1890. (Op. Solicitor of the Treasury, Nov. 11, 1891.)

Section 16 of the act of June 26, 1884 (commonly called the shipping act), as amended by section 14 of the act of July 24, 1897 (30 Stat., 151), provides:

"That all articles of foreign or domestic production needed and actually withdrawn from bonded warehouses and bonded manufacturing warehouses for supplies (not including equipment) of vessels of the United States engaged in foreign trade, or in trade between the Atlantic and Pacific ports of the United States, may be so withdrawn from said bonded warehouses, free of duty or of internal-revenue tax, as the case may be, under such regulations as the Secretary of the Treasury may prescribe; but no such article shall be landed at any port of the United States."

Regulations in pursuance of the above provisions September 24, 1897, Department circular No. 155. (T. D. 18379; T. D. 18643; T. D. 19262.) Articles 743 to 748, both inclusive, Customs Regulations, 1908.

The immunity from liability to tax is limited to the actual contents of the packages. (Op. Atty. Gen.; 30 Int. Rev. Rec., 94; *ibid.*, 101; 33 Int. Rev. Rec., 269.)

Withdrawal of distilled spirits from bonded warehouse for use of the United States, free of tax, under provisions of section 3464, Regulations No. 7, revised, p. 247.

SEC. 2982 [as amended by sec. 21 Act of Aug. 5, 1909, (36 Stat., 88)]. The privilege of purchasing supplies from public warehouses, free of duty, and from bonded manufacturing warehouses, free of duty or of internal-revenue tax, as the case may be, shall be extended, under such regulations as the Secretary of the Treasury shall prescribe, to the vessels of war of any nation in ports of the United States which may reciprocate such privileges toward the vessels of war of the United States in its ports.

Foreign war vessels.

Tariff act of August 5, 1909.—Instructions for the guidance of officers of the customs, extending existing regulations prescribed under the tariff act of July 24, 1897, and other acts, to importations under the act of August 5, 1909, wherever applicable. (Circular No. 35; T. D. 29939, Aug. 6, 1909.)

<sup>Construction of
act March 2, 1833
(4 Stat., 632).</sup> SEC. 3465. An act entitled "An act further to provide for the collection of duties on imports," passed March second, eighteen hundred and thirty-three, shall not be so construed as to apply to cases arising under an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June thirtieth, eighteen hundred and sixty-four, or any act in addition thereto or in amendment thereof, nor to any case in which the validity or interpretation of said act or acts shall be in issue.

Hornthall *v.* The Collector (9 Wall., 566); The Assessor *v.* Osbornes (9 Wall., 577).

The words "revenue laws," where used broadly and generally, include internal revenue as well as customs laws. (United States *v.* Dustin, 15 Int. Rev. Rec., 30.)

AN ACT Relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon.

[Act Aug. 13, 1894 (28 Stat., 279), amended by act of Mar. 23, 1910 (36 Stat., 241).]

That whenever any recognition, stipulation, bond, or undertaking conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognition, stipulation, bond, or undertaking specified, is by the laws of the United States required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof

^{Bonds executed and guaranteed solely by a corporation incorporated under the laws of the United States, or of any State having power to guarantee}

shall be sufficient when executed or guaranteed solely by a corporation incorporated under the laws of the United States, or of any State having power to guarantee the fidelity of persons holding positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings: *Provided*, That such recognition, stipulation, bond, or undertaking be approved by the head of department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a guarantee company or by any particular guarantee company.

SEC. 2. That no such company shall do business under the provisions of this Act beyond the limits of the State or Territory under whose laws it was incorporated and in which its principal office is located, nor beyond the limits of the District of Columbia, when such company was incorporated under its laws or the laws of the United States and its principal office is located in said District, until it shall

^{Power of attorney.} by a written power of attorney appoint some person residing within the jurisdiction of the court for the judicial district wherein such suretyship is to be undertaken, who shall be a citizen of the State, Territory, or District of Columbia, wherein such court is held, as its agent, upon whom may be served all lawful process against such company, and who shall be authorized to enter an appearance

in its behalf. A copy of such power of attorney, duly certified and authenticated, shall be filed with the clerk of the district court of the United States for such district at each place where a term of such court is or may be held, which copy, or a certified copy thereof, shall be legal evidence in all controversies arising under this Act. If any such agent shall be removed, resign, or die, become insane, or otherwise incapable of acting, it shall be the duty of such company to appoint another agent in his place as herein-before prescribed, and until such appointment shall have been made, or during the absence of any agent of such company from such district, service of process may be upon the clerk of the court wherein such suit is brought, with like effect as upon an agent appointed by the company. The officer executing such process upon such clerk shall immediately transmit a copy thereof by mail to the company, and state such fact in his return. A judgment decree, or order of a court entered or made after service of process as aforesaid shall be as valid and binding on such company as if served with process in said district.

SEC. 3. As amended by act of March 23, 1910 (36 Stat., 241). That every company, before transacting any business under this Act, shall deposit with the Secretary of the Treasury of the United States a copy of its charter or articles of incorporation, and a statement, signed and sworn to by its president and secretary, showing its assets and liabilities. If the said Secretary of the Treasury shall be satisfied that such company has authority under its charter to do the business provided for in this Act, and that it has a paid-up capital of not less than two hundred and fifty thousand dollars, in cash or its equivalent, and is able to keep and perform its contracts, he shall grant authority in writing to such company to do business under this Act.

SEC. 4. That every such company shall, in the months of January, April, July, and October of each year, file with the said Secretary of the Treasury a statement, signed and sworn to by its president and secretary, showing its assets and liabilities, as is required by section three of this Act. And the said Secretary of the Treasury shall have the power, and it shall be his duty, to revoke the authority of any such company to transact any new business under this Act whenever in his judgment such company is not solvent or is conducting its business in violation of this Act. He may institute inquiry at any time into the solvency of said company and may require that additional security be given at any time by any principal when he deems such company no longer sufficient security.

An act to amend an act approved August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon," approved March 23, 1910. (36 Stat., 241.)

SEC. 5. That any surety company doing business under the provisions of this Act may be sued in respect thereof Company may be sued in any U. S. court.

in any court of the United States which has now or hereafter may have jurisdiction of actions or suits upon such recognizance, stipulation, bond, or undertaking, in the district in which such recognizance, stipulation, bond, or undertaking was made or guaranteed, or in the district in which the principal office of such company is located. And for the purposes of this Act such recognizance, stipulation, bond, or undertaking shall be treated as made or guaranteed in the district in which the office is located, to which it is returnable, or in which it is filed, or in the district in which the principal in such recognizance, stipulation, bond, or undertaking resided when it was made or guaranteed.

Neglect or refusal to pay judgment or decree. SEC. 6. That if any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking made or guaranteed by it under the provisions of this Act, from which no appeal, writ of error, or supersedeas has been taken, for thirty days after the rendition of such judgment or decree, it shall forfeit all right to do business under this Act.

Company estopped to deny its corporate power, etc. SEC. 7. That any company which shall execute or guarantee any recognizance, stipulation, bond, or undertaking under the provisions of this Act shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute or guarantee such instrument or assume such liability.

Failure to comply with provisions of this act. Forfeiture. SEC. 8. That any company doing business under the provisions of this Act which shall fail to comply with any of its provisions shall forfeit to the United States for every such failure not less than five hundred dollars nor more than five thousand dollars, to be recovered by suit in the name of the United States in the same courts in which suit may be brought against such company under the provisions of this Act, and such failure shall not affect the validity of any contract entered into by such company.

Instructions regarding preparation of bonds executed by corporate sureties. (Cir. No. 711; T. D. 1279; Int. Rev. Mim. Cir. No. 562; T. D. 1382.)

Execution of bonds on other forms than those furnished by the Government forbidden. (T. D. 1591.)

Collectors are forbidden to exact that bonds shall be furnished by a guarantee company or any particular guarantee company. (T. D. 1155.)

Actual liability of surety companies on outstanding warehousing bonds, and not the full penal sum of such bonds, to be hereafter certified by collectors, and to be taken into account in determining the qualification of such companies to new bonds offered by the same principal. (T. D. 1316.)

Acknowledgment of bonds no longer required. (T. D. 1370.)

Regulations applicable to surety companies doing business with the United States under the act of August 13, 1894, as amended. (Dept. Circular No. 54; T. D. 30937, September 21, 1910.)

Sureties on official bonds can not withdraw from such bonds without the consent of the United States, and notice to the appropriate Department that they will be no longer bound is ineffective to relieve them from liability for subsequent defalcation.

tions of their principal. (*United States v. Campbell* (1909), circuit court of appeals, 170 Fed. Rep., 318.)

This act requires the appointment of a process agent in the district where the principal resides, and also in the district where the contract is to be performed, and where the bond is returnable or filed. (28 Op. Atty. Gen., 34.)

OFFICIAL BONDS.

[Extract from legislative, executive, and judicial appropriation act, approved March 2, 1895 (28 Stat., 807).]

SEC. 5. * * * * * * * Hereafter all bonds of the Treasurer of the United States, collectors of internal revenue, collectors, naval officers, surveyors, and other officers of the customs, either as such officers or as disbursing officers of the Treasury, bonds of the Secretary of the Senate, Clerk of the House of Representatives, and the Sergeant-at-Arms of the House of Representatives, and all such bonds now on file in the office of the Comptroller of the Treasury, shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in regard to such bonds, as the successor of the Commissioner of Customs and First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury.

Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed or strengthened every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor: *Provided*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: *And provided further*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States.

Bonds of collectors of internal revenue to be filed with Secretary of Treasury.

Official bonds to be examined at least every two years.

Bonds renewed or strengthened every four years or oftener.

Period of liability covered on official bonds.

Sec. 3836, R. S., not repealed nor modified. Postal bonds not affected.

[Extract from the urgent deficiency appropriation act for the fiscal year 1909, approved August 5, 1909 (36 Stat., 118, 125).]

* * * * *

Bonds from surety companies. Until otherwise provided by law no bond shall be accepted from any surety or bonding company for any officer or employee of the United States which shall cost more than thirty-five per centum in excess of the rate of premium charged for a like bond during the calendar year nineteen hundred and eight: *Provided*, That hereafter the United States shall not pay any part of the premium or other cost of furnishing a bond required by law or otherwise of any officer or employee of the United States.

Joint commission. That a joint commission consisting of three Senators, to be appointed by the President of the Senate, and three Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives, shall inquire into the rates of premium heretofore and now being charged, as well as those proposed to be charged, by surety or bonding companies for bonds of officers or employees of the United States and report to Congress by bill or otherwise at its next session what regulation, if any, should be exercised under law or otherwise over the same.

* * * * *

(27 Op. Atty. Gen., 597.)
 (28 Op. Atty. Gen., 28, Oct. 28, 1909. Dept. Circular No. 58, Nov. 4, 1909.)

Senate Report No. 1260, 61st Congress, 3rd Sess.

[Notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials, and fixing a limitation of time within which suits shall be brought against said sureties upon said bonds.]

Notification to obligors. SEC. 1. [Act of Aug. 8, 1888 (25 Stat., 387).] That hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond.

Suit within five years. SEC. 2. That if, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness.

[Former laws made applicable to war revenue act.]

SEC. 31. [*Act of June 13, 1898 (30 Stat., 448).*] That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this Act.

HAWAII.

Hawaii.

AN ACT To provide a government for the Territory of Hawaii. (Act Apr. 30, 1900, 31 Stat., 141.)

[Extracts.]

SEC. 5. That the Constitution, and except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: *Provided*, That sections eighteen hundred and fifty and eighteen hundred and ninety of the Revised Statutes of the United States shall not apply to the Territory of Hawaii.

* * * * *

SEC. 87. That the Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary of the Treasury shall direct.

* * * * *

SEC. 104. This Act shall take effect forty-five days from and after the date of the approval thereof, excepting only as to section fifty-two, relating to appropriations, which shall take effect upon such approval.

This act took effect June 14, 1900.

Joint resolution providing for the annexation of Hawaii, approved July 7, 1898, 30 Stat., 750.

Laws relating to the exportation of articles free of tax, or with benefit of drawback, not applicable to shipment of articles to Hawaii on and after June 14, 1900. (T. D., 120.)

Forfeiture of a vessel for violation of the internal-revenue laws. (The Kauailani, 128 Fed. Rep., 879.)

PORTO RICO.

Porto Rico.

AN ACT Temporarily to provide revenues and a civil government for Porto Rico, and for other purposes. (Act of Apr. 12, 1900, 31 Stat., 77.)

[Extracts.]

SEC. 3. That on and after the passage of this Act all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries; and in

Tax on articles from.

addition thereto upon articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn for consumption or sale upon payment of a tax equal to the internal-revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps to be purchased and provided by the Commissioner of Internal Revenue and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

* * * * *

Internal-revenue laws not applicable. SEC. 14. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or herein-after otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico.

SEC. 41. That this Act shall take effect and be in force from and after the first day of May, nineteen hundred.

The organic act of Porto Rico, called "The Foraker Act." (Circular No. 59, May 3, 1900; T. D., 22198.)

War with Spain declared (Act of Apr. 25, 1898; 30 Stat., 364.) Treaty of Paris ceding Porto Rico to the United States ratified and proclaimed April 11, 1899. Circular No. 57; (T. D. 21006; T. D. 23501).

The Act of April 12, 1900, called "The Foraker Act" constitutional. (Downes *v.* Bidwell, 182 U. S., 244.)

Abolition of duties. Proclamation of the President under section 3. (July 25, 1901; T. D. 23202.)

Circular No. 606 relative to collection of internal-revenue tax in Porto Rico (July 26, 1901; T. D. No. 387; Cir. No. 607; T. D. 407, Aug. 22, 1901).

Collection of internal-revenue tax upon articles of merchandise coming from Porto Rico. (Cir. No. 693, T. D. 1130, Mar. 1, 1907.)

Importation of Porto Rican products (24 Op. Atty. Gen. 55, 612).

Since April 11, 1899, Porto Rico has been de facto and de jure American territory. (Ponce *v.* Roman Cath. Church, 210 U. S., 296.)

AN ACT To provide means for the sale of internal-revenue stamps in the island of Porto Rico, approved June 29, 1906 (34 Stat., 620.)

Deputy collector in Porto Rico. That all United States internal-revenue taxes now imposed by law on articles of Porto Rican manufacture coming into the United States for consumption or sale may hereafter be paid by affixing to such articles before shipment thereof a proper United States internal-revenue stamp denoting such payment, and for the purpose of carrying into effect the provisions of this Act the Secretary of the Treasury is authorized to grant to such collector of internal revenue as may be recommended by the Commissioner of Internal Revenue, and approved by the Secretary, an allowance for the salary and expenses of a

deputy-collector of internal revenue, to be stationed at San Juan, Porto Rico, and the appointment of this deputy to be approved by the Secretary.

The collector will place in the hands of such deputy all stamps necessary for the payment of the proper tax on articles produced in Porto Rico and shipped to the United States, and the said deputy, upon proper payment made for said stamps, shall issue them to manufacturers in Porto Rico. All such stamps so issued or transferred to said deputy collector shall be charged to the collector and be accounted for by him as in the case of other tax-paid stamps.

The deputy collector assigned to this duty shall perform such other work in connection with the inspection and stamping of such articles, and shall make such returns as the Commissioner of Internal Revenue may, by regulations approved by the Secretary of the Treasury, direct, and all provisions of existing law relative to the appointment, duties, and compensation of deputy collectors of internal revenue, including office rent and other necessary expenses, shall, so far as applicable, apply to the deputy collector of internal revenue assigned to duty under the provisions of this Act.

SEC. 2. That before entering upon the duties of his ^{Bond.} office such deputy collector shall execute a bond, payable to the collector of internal revenue appointing him, in such amount and with such sureties as he may determine.

Sale of internal-revenue stamps in Porto Rico (Cir. No. 679, July 25, 1906; T. D. 1031).

Cigars of Porto Rican manufacture brought to the United States are subject to internal-revenue tax and must have affixed thereto the same stamps as required for domestic cigars. (Dept. circulars: 54, Apr. 25, 1900; 56, Apr. 25, 1900; 81, July 26, 1901; 85, Aug. 23, 1901.)

"An Act to impose a tax on alcoholic compounds coming from Porto Rico, and for other purposes," approved February 4, 1909 (Sec. [3251b.] p. 152). Circular No. 734; T. D. 1462.

Words "alcoholic compounds" to be omitted from tax-paid stamps for alcohol and other uncompounded spirits brought from Porto Rico. (T. D. 1481.)

PHILIPPINE ISLANDS.

AN ACT Temporarily to provide revenue for the Philippine Islands, and for other purposes. Approved March 8, 1902 (32 Stat., 54).

[Extract.]

* * * * *

SEC. 6. That all articles manufactured in bonded manufacturing warehouses in whole or in part of imported materials, or of materials subject to internal-revenue tax and intended for shipment from the United States to the Philippine Islands, shall, when so shipped, under such regulations as the Secretary of the Treasury may prescribe, be exempt from internal-revenue tax, and shall not be charged with duty except the duty levied under this Act upon imports into the Philippine Islands.

Stamps.

Deputy collector.

Returns.

Compensation.

Bond.

That all articles subject under the laws of the United States to internal-revenue tax, or on which the internal-revenue tax has been paid, and which may under existing laws and regulations be exported to a foreign country without the payment of such tax, or with benefit of drawback, as the case may be, may also be shipped to the Philippine Islands with like privilege, under such regulations and the filing of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue may, with the approval of the Secretary of the Treasury, prescribe. And all taxes paid upon such articles shipped to the Philippine Islands since November fifteenth, nineteen hundred and one, under the decision of the Secretary of the Treasury of that date, shall be refunded to the parties who have paid the same, under such rules and regulations as the Secretary of the Treasury may prescribe, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

Drawback. That where materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the shipment of said articles to the Philippine Archipelago a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties, under such rules and regulations as the Secretary of the Treasury may prescribe.

* * * *

T. D. 484; T. D. 491. T. D. No. 23586. Shipments to the Philippine Islands of articles subject to internal-revenue tax. (Regulations No. 29, rev.)

Rules and regulations for the refunding of internal-revenue taxes paid upon articles shipped to the Philippine Islands since November 15, 1901 (Cir. No. 626, July 3, 1902; T. D. 542.)

Treaty of peace ratified and proclaimed April 11, 1899. (T. D. No. 21006; Cir. No. 57; T. D. No. 23501.)

Emil J. Pepke v. United States. 183 U. S. 176. Case known as the "Fourteen Diamond Rings Case," involving the constitutionality of the imposition of customs duties upon merchandise brought into the United States from the Philippines after the treaty of peace took effect. Philippines not a foreign country after its cession. The effect of this decision was to give the Philippines the same status that Porto Rico had before the Foraker Act was passed.

The President authorized to establish temporary civil government in the Philippine Islands. (Act of March 2, 1901; 31 Stat., 910.)

An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes. (Act of July 1, 1902; 32 Stat., 691.)

All articles the growth and product of the Philippine Islands coming directly from said islands to the United States or any of its possessions for use and consumption therein, shall be exempt from any export duties imposed in the Philippine Islands. (Act to raise revenue for the Philippine Islands and for other purposes. Act of Aug. 5, 1909; 36 Stat., 174.)

Funds derived from the sale of internal-revenue stamps in the Philippine Islands belong to the Philippine government under the provisions of section 4 of the act of March 8, 1902. (32 Stat., 54.) (28 Op. Atty. Gen., 70.)

BONDS FOR EXPORT TO THE PHILIPPINE ISLANDS.

AN ACT To relieve obligors on bonds given to the United States upon the exportation to the Philippine Islands prior to November 20, 1901, of articles subject to internal-revenue tax, approved April 28, 1904 (33 Stat., 574).

That all bonds given to the United States prior to November twentieth, nineteen hundred and one, upon the transportation and shipment to the Philippine Islands of articles subject under existing statutes to the payment of internal-revenue tax, which are in form given for the proper exportation of the article therein described to a foreign country free of internal-revenue tax, or with benefit of drawback, as the case may be, shall be treated in all respects as if given for and upon a shipment to a foreign country, and shall be canceled upon presentation of evidence of the shipment to a port of the Philippine Islands, or of landing at such port, as the case may be, the same as if such port were a port of a foreign country. The obligors upon any of such bonds shall have such reasonable time from and after the passage of this Act as may be prescribed by the Secretary of the Treasury within which to present the evidence required by existing statutes for the cancellation of such bonds.

Prior to November 20, 1901, for the purposes of commerce, the Philippine Islands were treated as foreign territory. Certain articles liable to pay internal-revenue tax were allowed to be shipped in bond, to be consumed in the Islands. This act provided that these bonds should be canceled upon presentation of evidence of the shipment or landing of such articles in any ports in the Philippine Islands.

ARTICLES COMING INTO THE UNITED STATES FROM THE PHILIPPINE ISLANDS.

[Extract from an act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, approved August 5, 1909 (36 Stat., 11, 83).]

SEC. 5. [*Act of Aug. 5, 1909 (36 Stat., 83).*] That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries:

Provided, That, except as otherwise hereinafter provided, all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty, except rice, and except, in any fiscal year, sugar in excess of three hundred thousand gross tons, wrapper tobacco and filler tobacco when mixed or packed

Imports from
Philippine Is-
lands subject to
regular duties.

Native prod-
ucts excepted.

with more than fifteen per centum of wrapper tobacco in excess of three hundred thousand pounds, filler tobacco in excess of one million pounds, and cigars in excess of one hundred and fifty million cigars, which quantities shall be ascertained by the Secretary of the Treasury under such rules and regulations as he shall prescribe:

Duty in, on sugar and tobacco imported from other countries.

And provided further, That sugar, refined or unrefined, and tobacco, manufactured or unmanufactured, imported into the Philippine Islands from foreign countries, shall be dutiable at rates of import duty therein not less than the rates of import duty imposed upon sugar and tobacco in like forms when imported into the United States:

Preference to small sugar producers.

And provided further, That, under rules and regulations to be prescribed by the Secretary of the Treasury, preference in the right of free entry of sugar to be imported into the United States from the Philippine Islands, as provided herein, shall be given, first, to the producers of less than five hundred gross tons in any fiscal year, then to producers of the lowest output in excess of five hundred gross tons in any fiscal year:

U. S. products to be admitted free.

Provided, however, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty:

And provided further, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof from the country of origin to the country of destination:

Provided, That direct shipment shall include shipments in bond through foreign territory contiguous to the United States:

Articles damaged in transit.

Provided, however, That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained:

Articles for U. S. to be free from export duties.

And provided further, That all articles, the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands, admitted into the ports of the United States free of duty under the provisions of this section and shipped as hereinbefore provided from said islands to the United States for use and consumption therein,

shall be hereafter exempt from the payment of any export duties imposed in the Philippine Islands:

And provided further, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands, a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe; and such articles, goods, wares, or merchandise, shipped from said islands to the United States, shall be exempt from the payment of any tax imposed by the internal-revenue laws of the Philippine Islands:

And provided further, That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws in the Philippine Islands, and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States:

And provided further, That, in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise, imported into the Philippine Islands from countries other than the United States, the internal-revenue tax imposed by the Philippine government on like articles manufactured and consumed in the Philippine Islands or shipped thereto, for consumption therein, from the United States:

And provided further, That from and after the passage of this Act all internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the Insular treasury, and shall only be allotted and paid out therefrom in accordance with future acts of the Philippine legislature, subject, however, to section seven of the Act of Congress approved July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes:"

And provided further, That, until action by the Philippine legislature, approved by Congress, internal revenues paid into the Insular treasury, as hereinbefore provided,

Tax equal to
internal-revenue
tax.

Exempt from
P. I. tax.

Internal-revenue
tax on im-
ports from U. S.

Exempt from
U. S. tax.

Internal-reve-
nue tax on im-
ports, other than
from U. S.

Internal re-
venues to be paid
into Insular treas-
ury.

Allotment by
P. I. Commission.

shall be allotted and paid out by the Philippine Commission.

Regulations concerning articles subject to internal-revenue tax coming into the United States from the Philippine Islands. No. 8, revised July 1, 1910, p. 68. (T. D. 1531, modified by T. D. 1567.)

Regulations under section 5, act of August 5, 1909. Circular No. 37, August 10, 1909. (T. D. 29944.)

Shipments from the Philippine Islands of sugar, tobacco, and cigars. Dept. Cir. No. 57, Nov. 1, 1909.

Articles shipped from the Philippine Islands. (T. D. 1569.)

Shipments to and from Philippine Islands. Circular No. 39, July 1, 1910. (T. D. 30744.)

APPENDIX.

CONTAINING LAWS OF A GENERAL NATURE AND MISCELLANEOUS PROVISIONS APPLICABLE TO THE ADMINISTRATION OF THE INTERNAL-REVENUE LAWS.

CHAPTER 1 (P. 383).

Suits and prosecutions—Jurisdiction—Practice—Evidence—Liens—Limitations—United States attorneys—Duties as to prosecutions—Reports—Clerks of courts, etc.

Jurisdiction of district courts.	Interest on judgments, etc.
Jurisdiction of circuit courts.	Writs of error and appeals.
Suits for penalties, forfeitures, and taxes.	Circuit courts of appeals.
Removal of suits against officers from State to United States circuit courts.	Certificate of probable cause.
Arrests.	Property taken under revenue laws irrepleviable.
Competency of witnesses. State laws.	Statute of limitations.
Production of books, papers, etc., in suits other than criminal.	Compromises of claims and of cases after judgment. Pardons.
Certified copies of papers admissible as evidence.	Employment of attorneys or counsel.
Costs in internal-revenue suits upon information from other than a collector, etc.	Duty of district attorneys to prosecute delinquents and to defend officers.
Costs, when paid by defendant.	Reports of district attorneys and marshals.
Laws of the States, rules of decision, etc.	Warrants of arrest and prosecutions.
Proceedings on execution. State laws.	Clerks of courts, reports of, etc.
Act to regulate liens of judgments and decrees of United States courts.	

CHAPTER 2 (P. 404).

Duties of officers charged with receiving or disbursing public moneys—Penalties for embezzlements—Proceedings against delinquent officers, etc.

Moneys to be deposited without deduction.	Embezzlement; penalty for failure to deposit as required.
Duty of disbursing officers.	Record evidence of embezzlement.
Persons having moneys of United States must pay the same to Treasurer, etc.	Refusal to pay any draft, etc., <i>prima facie</i> evidence of embezzlement.
Accounts to be rendered.	Evidence of conversion.
Distinct accounts required according to appropriation.	Unlawfully receiving public money.
Suits to recover money from officers regulated.	Embezzlement by internal-revenue officers and assistants where offense is not otherwise punishable.
Distress warrant.	Penalty for clerks and officers of court failing to deposit moneys.
Failure of disbursing officer to account; duty thereupon of Auditor and Solicitor of Treasury.	Penalty for receiving moneys belonging to the registry of the court.
Duties of officers as custodians of public moneys.	Penalty for failure to make reports.
Embezzlement; penalty for requiring receipt for larger sum than that actually paid.	Disbursing officer forbidden to trade in public funds.
Embezzlement; penalty for disbursing officer unlawfully depositing, converting, loaning, or transferring public money.	Collecting officers forbidden to trade in public property.
Embezzlement; penalty for custodians of public money failing to safely keep, etc.	Transcripts from books, etc., of the Treasury to be evidence in suits against delinquents.
Embezzlement; penalty for failure to render accounts.	Delinquents for public money; judgment at return term, unless, etc.

CHAPTER 3 (P. 414).

Penalties for perjury—Bribery—Resisting officers—Conspiracy—Falsely assuming to be an officer, and other offenses.

Penalty for perjury.	Penalty for larceny or robbery of personal property of the United States.
Penalty for resisting officer in serving process.	Penalty for embezzling or stealing public property or receiving and retaining in possession stolen property.
Penalty for rescuing prisoners.	Penalty for forging, altering, counterfeiting, etc., bid, bond, public record, etc.
Penalty for rescuing or attempting to rescue property taken or detained by revenue officer.	Penalty for counterfeiting obligations and other securities of the United States, including stamps.
Penalty for extortion by internal-revenue informers.	Penalty for making false or fraudulent claims.
Penalty for conspiracy to prevent persons from accepting office.	Provisions of the criminal code relative to distilled spirits.
Penalty for falsely assuming to be a Government officer.	
Penalty for bribery.	
Penalty for conspiracy.	
Penalty for destroying or carrying away without authority public records, papers, etc.	

CHAPTER 4 (P. 422).

Claims—Set-offs—Appropriations, etc.

Claims.	Unauthorized contracts prohibited.
No payment to person in arrears to the United States.	Unexpended balances of appropriations.
Set-offs and credits.	Assignment of claims void, unless, etc.
Priority of United States in insolvent estates.	Attorneys before the Treasury Department.
Permanent annual appropriations.	Duplicate checks when original is lost.
No expenditures beyond appropriations.	Letters, packages, etc., on Government business sent free; penalty envelopes.
Heads of Departments prohibited from accepting voluntary service for the Government.	Government to have priority in the transmission of telegrams.
	Disposition of useless papers.

CHAPTER 5 (P. 431).

Officers, clerks, and employees—Extra services—Perquisites—Prohibition as to business—Political contributions, etc.

Honorably discharged soldiers or sailors disabled in the service preferred for appointment.	Certain business forbidden to clerks in the Treasury Department.
Preference given to soldiers and soldiers' widows in reducing force.	Penalty for officers and clerks receiving compensation in matters before the department.
Employees to be paid from special appropriations only.	Officers interested in claims; penalty.
Holidays.	Persons formerly in the departments not to prosecute claims in them within two years.
Double salaries, compensation for extra services, perquisites, etc.	Restrictions on payment for services.
Expenses of clerks, officers, etc., sent away as witnesses.	Presents to superior officers prohibited.
No mileage beyond traveling expenses allowed.	Political contributions, immunity from official proscription.

CHAPTER 1.

Suits and prosecutions—Jurisdiction—Practice—Evidence—Liens—Limitations—Compromises and remissions—United States attorneys—Duties as to prosecutions—Commissioners—Clerks of courts—Reports, etc.

NOTE.—“The Judicial Code,” an Act to codify, revise and amend the laws relating to the judiciary, approved March 3, 1911 (36 Stat. 1087) goes into effect January 1, 1912. It abolishes circuit courts (Sec. 289) and imposes the powers and duties upon district courts.

Several of the sections in this chapter are superseded as such and reproduced as noted under the appropriate sections. The provisions, so far as they are substantially the same as existing statutes, are construed as continuations thereof and not as new enactments. (Sec. 294).

Jurisdiction of district courts.

SEC. 563. The district courts shall have jurisdiction as follows:

First. Of all crimes and offenses cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, Title “Crimes.”

* * * * *

Third. Of all suits for penalties and forfeitures incurred under any law of the United States.

* * * * *

Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any internal-revenue tax, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title, or interest. (Sec. 3207, p. 105.)

United States *v.* Shaw (39 Fed. Rep., 433).

* * * * *

Eighth. * * * And of all seizures on land and on waters not within admiralty and maritime jurisdiction. * * *

Coffey *v.* United States (116 U. S., 427; 117 Id., 233).

See Sec. 24 of “The Judicial Code,” Act of March 3, 1911.

Jurisdiction of circuit courts.

SEC. 629. The circuit courts shall have original jurisdiction as follows:

* * * * *

Fourth. * * * Of all causes arising under any law providing internal revenue. * * *

This clause was not repealed by the act of March 3, 1875 (18 Stat., 470), or by the act of March 3, 1887 (24 Stat., 552), defining the jurisdiction of the circuit courts, and these courts have jurisdiction in suits arising under the revenue laws, although the amount in dispute is less than \$2,000. (*Ames v. Hager*, 36 Fed. Rep., 129; *Commissioners v. Buckner*, 48 Fed. Rep., 533.)

Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397; T. D. 760).

Twentieth. Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

Circuit courts abolished after January 1, 1912. (Sec. 289, Act of March 3, 1911.)

The original judiciary act of September 24, 1789, remained in force with scarcely any modification until the act of March 3, 1875, which greatly enlarged the jurisdiction of the circuit courts (amended by the act of March 3, 1887; corrected by the act of August 13, 1888, passed to cure defects in the enrollment of the act of March 3, 1887).

AN ACT To correct the enrollment of an act approved March third, eighteen hundred and eighty-seven, entitled "An act to amend sections one, two, three, and ten of an act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the State courts, and for other purposes, approved March third, eighteen hundred and seventy-five. (Act of August 13, 1888, 25 Stat., 433.)

SEC. 1. That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, * * *

United States circuit courts have original jurisdiction when the right of either party depends on the validity of an act of Congress. (*Patton v. Brady*, 184 U. S., 611.)

Exclusive jurisdiction of courts of United States.

SEC. 711. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.

Fourth. Of all seizures under the laws of the United States on land or on waters not within admiralty and maritime jurisdiction.

* * * * *

Reenacted Sec. 256 of "The Judicial Code," Act March 3, 1911.

The Supreme Court is the only court of the United States which derives any part of its power directly from the Constitution. The circuit and district courts of the United States are, by authority of the Constitution, the creatures of the National Legislature, having such jurisdiction, and only such, as Congress has been pleased to confer upon them, and having no common-law jurisdiction, though drawing upon the common law for modes of procedure and practice when necessary to carry into effect the jurisdiction given by statute. (*United States v. Cultus Joe*, 15 Int. Rev. Rec., 58.)

In general a crime against the laws of the United States is not cognizable in a State court. (*Ex parte Houghton*, 27 Int. Rev. Rec., 273.)

The same offense may be made punishable both under the laws of a State and of the United States; and over such offenses the State and Federal courts have concurrent jurisdiction. (*United States v. Wells*, 15 Int. Rev. Rec., 56; Fed. Cas. No. 16665.)

The same act may constitute an offense against the United States and against a State, subjecting the guilty party to punishment under the laws of each government; and may embrace two or more offenses. (*Cross v. North Carolina*, 132 U. S., 131, and cases cited. And see *Teal v. Felton*, 12 How., 284, 292; *Crossley v. California*, 168 U. S., 641.)

A suit against an internal-revenue collector to recover taxes alleged to have been illegally collected is cognizable in the United States circuit court, both under section 629, giving that court jurisdiction of causes arising under any law providing internal revenue, and under act of March 3, 1887, giving it jurisdiction of causes arising under the laws of the United States. (Commissioners of Sinking Fund of Louisville *v. Buckner* (1891), circuit court, 48 Fed. Rep., 533. See *Insurance Co. v. Ritchie*, 5 Wall., 541; *City of Philadelphia v. Collector*, 5 Wall., 570; *Hornthal v. Collector*, 9 Wall., 560; *Assessor v. Osborne*, 9 Wall., 567.)

Williams v. Reynolds (131 U. S. cxi), *Cincinnati Brewing Co. v. Bettman, Collr.* (102 Fed. Rep., 16).

A State court has no authority to enjoin the proceedings of a Federal court. (*Central National Bank, Boston, v. Hazard*, 49 Fed. Rep., 293.)

Conflicting State and Federal jurisdiction. (*Booth v. St. Louis Fire Engine Manufacturing Co.*, 40 Fed. Rep., 1.)

Jurisdiction where a federal question is involved. (*Adams Express Co. v. Michigan*, 177 U. S., 404.)

Offenses begun in one district and completed in another.

SEC. 731. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.

Reenacted Sec. 42 of "The Judicial Code," Act March 3, 1911.

The court of the district where the res is seized has jurisdiction though the violation of law occurred in another State. (U. S. *v. 396 Barrels of Distilled Spirits*, 3 Int. Rev. Rec. 114; Fed. Cas. No. 16502.)

Suits for taxes, penalties, or forfeitures to be brought in the name of the United States.

SEC. 919. All suits for the recovery of any duties, imposts, or taxes, or for the enforcement of any penalty or forfeiture provided by any act respecting imports or tonnage, or the registering and recording or enrolling and licensing of vessels, or the internal revenue, or direct taxes, and all suits arising under the postal laws, shall be brought in the name of the United States.

Where suits for penalties, forfeitures, and taxes are to be brought.

SEC. 732. All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found.

Reenacted Sec. 43 of "The Judicial Code," Act March 3, 1911.

SEC. 733. Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides.

Reenacted Sec. 44 of "The Judicial Code," Act March 3, 1911.

See section 3213, Revised Statutes, page 109.

United States v. New York, New Haven & Hartford Railroad Co. (10 Ben., 144; 24 Int. Rev. Rec., 341). *The Dollar Savings Bank v. United States*, (19 Wall., 227; 22 Int. Rev. Rec., 310).

Jurisdiction in case of actions on deputy collectors' bonds. (Sec. 3148, p. 63.)

Officers suffering injuries may maintain suits for damages in the United States circuit court of the district where the party resides or may be found. (Sec. 3171, p. 83.)

Jury may be waived in the trial of petty offenses. (*Shick v. U. S.*, 195 U. S., 65.)

Residence of a corporation. (*Booth et al. v. St. Louis Fire Engine Manufacturing Co.*, 40 Fed. Rep., 1.)

Penal offenses created by the statute, whether prosecuted by indictment or information, must be accurately and clearly described in the pleadings for recovery of the penalty. (*United States v. Mann*, 24 Int. Rev. Rec., 20; 95 U. S., 580.)

When the crime is a statutory one, the offense must be charged with precision and certainty. (*Ledbetter v. United States*, 170 U. S., 606.)

The accused must be apprised by the indictment, with reasonable certainty of the nature of the accusation against him. (*U. S. v. Simmons*, 96 U. S., 360.)

Persons not to be arrested in one district for trial in another in civil actions.

SEC. 1. [Act of Aug. 13, 1888 (25 Stat., 433), amending act of Mar. 3, 1875 (18 Stat., 470).] But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant. * * *

See sec. 51 of "The Judicial Code," Act of March 3, 1911.

A corporation may be indicted for the acts of its officers or employees. (*U. S. v. Baltimore & Ohio R. R. Co.*, 8 Int. Rev. Rec. 148; Fed. Cas. No. 14509.)

Suit against foreign corporations doing business in a State. (*Wilson Packing Co. v. Hunter*, 25 Int. Rev. Rec., 137.)

Foreign corporations, where to be sued. (*Mohr & Mohr Distilling Co. v. Sundry Insurance Companies*, 28 Int. Rev. Rec., 218.)

Service of process on nonresident defendant on compulsory attendance illegal. (*United States v. Bridgman*, 26 Int. Rev. Rec., 139.) Also where fraud is used to induce defendant to come within jurisdiction of court (*Steiger v. Bonn*, 26 Int. Rev. Rec., 365). A party going into another State as witness exempt from process (*Brooks v. Farwell*, 26 Int. Rev. Rec., 355).

Sections 737, 740 provide for cases where there are two or more defendants residing in different districts.

A criminal prosecution must be had in the district where the crime or offense was committed. (Sec. 563, R. S.)

In conspiracy to defraud, the parties may be tried in any district where the conspiracy is committed or an overt act done in pursuance of the illegal purpose. (*U. S. v. Rindskopf*, 6 Biss. 259; Fed. Cas. No. 16165.)

Removal of suits or prosecutions against officers from State courts to United States circuit courts.

SEC. 643. [As amended by act of Feb. 8, 1894 (28 Stat., 36).] When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; * * * the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court, and in the following manner: Said petition shall set forth

the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said circuit court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the circuit court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court.

When the suit is commenced in the State court by summons, subpœna, petition, or another process except capias, the clerk of the circuit court shall issue a writ of certiorari to the State court, requiring it to send to the circuit court the record and proceedings in the cause.

When it is commenced by capias, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the State court, or left at his office, by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the circuit court, and any further proceedings, trial, or judgment therein in the State court shall be void.

And if the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the circuit court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the circuit court that no copy of the record and proceedings therein in the State court can be obtained, the circuit court may allow and require the plaintiff to proceed de novo, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court. On failure of the plaintiff so to proceed, judgment of non prosequitur may be rendered against him, with costs for the defendant.

Reenacted Sec. 33 of "The Judicial Code," Act March 3, 1911.

Under this section, which declares that after removal "any further proceeding, trial, or judgment therein in the State court shall be void," an indictment found in a State court after the removal of the cause to the United States circuit court was null; and where, upon habeas corpus cum causa, it appears that the prisoners were in the discharge of their duty as revenue officers of the United States when the act was committed, and were without fault, they will be discharged (*State of North Carolina v. Kirkpatrick et al.* (1890); 42 Fed. Rep., 689; 36 Int. Rev. Rec., 133).

This act is constitutional. (*Sup. Court, State of N. C.; State v. Hoskins et al.*; 23 Int. Rev. Rec., 263; 77 N. C. 530.)

Removal of criminal case. (*Tennessee v. Davis*, 100 U. S., 257; 26 Int. Rev. Rec., 90.)

Case of a guard acting in aid of a marshal. (*Davis v. South Carolina*, 107 U. S., 597; 29 Int. Rev. Rec., 189.)

Habeas corpus: The writ can not be sustained if issued by State court to inquire into detention of a person by a United States officer. Conflict between State and United States courts. (*Tarble's Case*, 13 Wall., 397; 15 Int. Rev. Rec., 135; dissenting opinion of Chief Justice Chase, 15 ibid., 193.)

A summary proceeding by a landlord to recover from a lessee possession of premises used as a bonded warehouse, to which proceeding the collector of internal revenue and a United States storekeeper are made parties defendant, and described as undertenants holding over, is removable to a Federal court under this section. (*Gallatin v. Sherman et al.*, circuit court southern district of New York, (1896), 77 Fed. Rep., 337.)

When a prosecution can be deemed to be commenced within the meaning of the acts of Congress authorizing removal from State courts to United States courts for trial. (*Virginia v. Paul*, 148 U. S., 107.)

A criminal prosecution is commenced as soon as a warrant has been issued and is then removable into the United States circuit court. (*State of Georgia v. Bolton*, 11 Fed. Rep., 217.)

The removal of a prosecution against a United States revenue officer from a State to a Federal court is effected, and complete jurisdiction acquired, immediately upon the filing of a proper petition therefor in the clerk's office of the Federal court. (*State v. Sullivan*, 50 Fed. Rep., 593.)

Expenses accruing in a local court in action against a collector before being transferred to a Federal court are payable from the appropriation "Miscellaneous expenses, Internal-Revenue Service." (Comp. MS. Dec., Apr. 11, 1907, case of *Cureton v. Rucker*.)

Cost of procuring transcripts of the record of the local courts for the use of the United States payable by the Department of Justice. (Comp. MS. Dec., Lyman v. Cabell, Oct. 2, 1902.)

Charges which may be joined in one indictment.

SEC. 1024. When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.

Although section 3397 designates as felonies some of the offenses specified in it, and omits to designate others as felonies, offenses of each class, which arise out of one and the same transaction, may, under section 1024, be charged in one indictment in different counts. (*United States v. Louis Jacoby*, 12 Blatch., 491.)

Several charges may be joined in one indictment in separate counts, but the accused shall not be tried at the same time for different offenses; and an indictment charging the accused in one count with carrying on the business of a retail liquor dealer without having paid the special tax, and in another with dealing in manufactured tobacco without payment of the special tax, will be quashed. (*United States v. Gaston*, 28 Fed. Rep., 848.)

The subject of the joinder of distinct offenses in one indictment against the same person fully examined. (*Pointer v. United States*, 151 U. S., 396; *Williams v. United States*, 168 U. S., 390; *United States v. Maguire*, 22 Int. Rev. Rec., 146.)

The statute, in permitting the joinder of different offenses in a single indictment, by necessary implication authorizes a separate punishment for each offense proved. (*U. S. v. Bennett*, 17 Blatchf., 357; Fed. Cas. 14572; 26 Int. Rev. Rec., 45.)

Each count is in fact a separate indictment. (*U. S. v. Malone*, 9 Fed. Rep., 897.)

Consolidation of indictments. (*U. S. v. Green*, 146 Fed. Rep., 781.)

Felonies defined. All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors. (Sec. 335, act of Mar. 4, 1909, 35 Stat., 1152, Criminal Code.)

Offenders against the United States, how arrested and removed for trial—Warrants may be issued by State officers.

SEC. 1014. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

Marshal can not be aided by the military. (Sec 15, act of June 18, 1878 (20 Stat., 152); 16 Op. Atty. Gen., 162.)

A person arrested in one district may be held to bail for trial in another upon a certified copy of an indictment which has been found against him in such other district. (*United States v. Pope*, 24 Int. Rev. Rec., 29.)

A preliminary examination before a commissioner is not a proceeding in court. (*Todd v. United States*, 158 U. S., 278.)

Powers of United States commissioner. (*United States v. Berry*, 26 Int. Rev. Rec., 405.)

The powers exercised by a United States commissioner in the examination of a person charged with an offense are those common to all examining magistrates. To authorize him to commit he need not be convinced of the guilt of the accused, but the proof should be such as to afford good reason to believe that the offense was committed, and by the accused; otherwise it is his duty to discharge. (*Ex parte Jones*, 96 Fed. Rep., 200.)

Warrants of arrest, page 402.

Section 1014 made applicable to the Philippine Islands. Act of February 9, 1903 (32 Stat., 806).

Laws of the State constitute rules of decision as to competency of witnesses.

SEC. 858 [*Amended by act of June 29, 1906 (34 Stat., 618)*.]. The competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held.

Persons charged with crime can be witnesses in their own behalf.

Act of March 16, 1878. (20 Stat., 30.)

That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness.

And his failure to make such request shall not create any presumption against him.

Accomplices used as witnesses; rule as to prosecution. (*United States v. Ford, Whiskey Cases*, 99 U. S. (9 Otto), 594; 25 Int. Rev. Rec., 127.)

The evidence of an accomplice is competent. If corroborated by other witnesses, credit is to be given to it. (*United States v. Whalan et al.*, 7 Int. Rev. Rec., 161; *United States v. Callicott*, 7 *ibid.*, 179.)

No person shall be compelled in any criminal case to be a witness against himself. Fifth amendment to Constitution. (*In re Mark Strouse*, 11 Int. Rev. Rec., 182; *In re Phillips*, 10 Int. Rev. Rec., 107.)

An officer of a corporation is not privileged from giving testimony as a witness because it may tend to convict the corporation of a penal offense. (*London v. Everett H. Dunbar Corporation*, 179 Fed. Rep., 506.)

Production of books, papers, etc., in suits other than criminal.

SEC. 5 [Act of June 22, 1874 (18 Stat., 187)]. That in all suits and proceedings other than criminal arising under any of the revenue-laws of the United States, the attorney representing the Government, whenever, in his belief, any business-book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegation stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States.

But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid.

This act not repugnant to the Constitution. (*United States v. Three Tons of Coal*, 21 Int. Rev. Rec., 251.)

This section applies to proceedings under the internal-revenue laws as well as the customs-revenue laws. The act is constitutional. (*United States v. Distillery No. 28 and Other Property*, 21 Int. Rev. Rec., 366.)

A compulsory production of a person's private papers to be used as evidence against him in a proceeding to forfeit his property for alleged fraud against the revenue laws is an "unreasonable search or seizure" within the meaning of the fourth amendment to the Constitution. (*Boyd v. United States*, 116 U. S., 617; 32 Int. Rev. Rec., 62.)

The power to compel the production of books and papers covers such documents only as would be, "if produced, competent material evidence for the party applying therefor." It does not permit the inquisition into private records on the mere possibility that something may be found to refresh the recollection of a witness, such records not being in themselves relevant to the case. (*United States v. S. J. Tilden*, 25 Int. Rev. Rec., 352.)

Searches and seizures. (*Hale v. Henkel*, 201 U. S., 43.)

Section 724, R. S., as to power to produce books and papers in action at law.

Certified copies of papers admissible as evidence.

SEC. 882. Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.

As to transcripts from books in suits against delinquent officers. (Sects. 886, 887, p. 413.)

Typewritten letter signed with stencil inadmissible as evidence, unless acknowledged. (*Sprinkle v. U. S.*, (1906) 150 Fed. Rep., 56.)

The proper mode of proving papers on file in the Departments is by procuring certified copies. (*Barnes v. Schmeider*, 9 Wall., 253.)

Documents not official do not by the mere fact of certification become so authenticated as to entitle them to be read in evidence. (*Block v. United States*, 7 Ct. Cls., 406.)

In the matter of the application of a private person for a certified copy of records and files of Department. (30 Int. Rev. Rec., 382.)

No information in regard to transactions of an official character in this Department is to be communicated to anyone not authorized to receive the same.

No information in regard to the claim of any person which has ever been filed in the department is to be given to any other person unless proper authority is shown by way of power of attorney, or by letters of administration, or otherwise in a manner satisfactory to the Secretary, or an Assistant Secretary, or to the head of the proper Bureau in the Department, or chief of the proper division in the Secretary's office. (Department Rule IX; Dept. Cir., No. 69, July 5, 1906.)

In all cases where copies of documents or records are desired by, or on behalf of, parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only, and on a rule of the court upon the Secretary of the Treasury requesting the same. Exceptions to this rule will be made only on the written order of the Secretary or of an Assistant Secretary. (Department Rule IX.)

The records in the office of collector of customs respecting the entry, liquidation and payment of duties are so far public records that the importer has a right to inspect them when they relate to his importations. (*United States v. Benjamin H. Hutton and Charles G. Landon*, 25 Int. Rev. Rec., 57.)

Official communications privileged from disclosure on the ground of public policy. (*Gardner v. Anderson*, 22 Int. Rev. Rec., 41.)

Privileged records, documents, or communications. (*Shattuc v. McArthur*, 25 Fed. Rep., 137, note 2; 15 Op. Atty. Gen., 415, 562; 16 ibid., 24; 24 Int. Rev. Rec., 178; papers upon which an assessment is made.)

A subpoena duces tecum, issued by a State court, was served upon a district attorney, requiring him to appear as a witness in a private suit and bring with him all letters and telegrams received from the Commissioner of Internal Revenue relative to certain causes then pending in a United States court on indictments under the internal-revenue laws: *Advised*. That it would be proper for the attorney to appear before the State court in obedience to the writ, and there object to produce the papers on the ground that they are privileged, if, in his judgment or in that of the Commissioner, their production would be prejudicial to the public interests. (15 Op. Atty. Gen., 378; 23 Int. Rev. Rec., 341.)

The head of an executive department may legally prohibit the chief of a bureau from producing in court any official records of the department, or certified copies thereof, in obedience to a subpoena duces tecum, and from making or certifying copies of such official records.

The records of executive departments are quasi-confidential in their nature, and must be classed as privileged communications whose production can not be compelled by a court without express authority of law. (25 Op. Atty. Gen., 326.)

Officers of the executive departments can not be required to remove records or papers filed therein by subpoena duces tecum. (5 Lawrence Dec., 446.)

The Federal courts have jurisdiction, under section 753, to issue writ for the purpose of releasing a deputy revenue collector from imprisonment for alleged contempt of a State court in refusing to testify to the contents of the records of the internal-revenue office. (*In re Huttman*, 70 Fed. Rep., 700; 41 Int. Rev. Rec., 477.)

An instruction issued by the Commissioner of Internal Revenue directing collectors and their deputies to refuse to produce, in criminal prosecutions of liquor dealers in the State courts, the returns made to the collectors, or the lists showing payments of Federal liquor taxes, or to give information derived from official sources as to the fact of such payments, is valid. (In re Weeks, Vermont (1897), 82 Fed. Rep., 729; 43 Int. Rev. Rec., 393; *Boske v. Comingore*, 177 U. S., 459, T. D., 104; In re Lamberton, 124 Fed. Rep. 446; T. D., 689; *Stegall v. Thurman*, 175 Fed. Rep., 813; T. D., 1616; In re Comingore, collector (1899), 96 Fed. Rep., 552; T. D., 21584.)

Costs in internal-revenue suits upon information from other than collector, etc.

SEC. 969. When a suit for the recovery of any penalty or forfeiture accruing under any law providing internal revenue is brought upon information received from any person other than a collector, deputy collector, or inspector of internal revenue, the United States shall not be subject to any costs of suit.

Similar provision in section 3214, p. 111.

Costs when several actions are brought which might be joined in one. (Secs. 977, 980.)

Costs when paid by defendant.

SEC. 974. When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may in its discretion award that the defendant shall pay the costs of the prosecution.

The word defendant held to include a claimant in an action in rem for forfeiture. (*United States v. Seven Barrels Distilled Oil*, 8 Int. Rev. Rec., 162.)

Section 17 of the act of May 28, 1896 (29 Stat. 178), relative to salaries of district attorneys, provides that the act is not to be so construed as to prevent or affect the amount of taxation of costs against the unsuccessful party in civil proceedings or against defendants convicted of crimes or misdemeanors.

Laws of the States, rules of decision.

SEC. 721. The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply.

The above provision is not applicable to proceedings in equity, or in admiralty, or to criminal offenses against the United States. (*Bucher v. Cheshire Railroad Company*, 125 U. S., 555.)

The courts of the United States are governed by the rules of the common law, because the common law is in force in the State or Territory where the cause of action arose or is to be enforced, and not because the common law has been adopted by the United States, or has under the laws of the United States any binding force, except as being the law of some State, Territory, or District. *United States v. Garlinghouse et al.*, 11 Int. Rev. Rec., 11.)

Federal courts are bound to follow the decisions of the State courts construing their own constitution or statutes. (*Mooney v. Humphrey*, 28 Int. Rev. Rec., 343.)

How far decisions of the highest courts of a State on State laws are binding on Supreme Court of United States. (*Burgess v. Seligman*, 107 U. S., 20.)

See section 858, Revised Statutes, amended, page 389, as to laws of the State being rules of decision as to competency of witnesses.

Practice conforms to forms and modes of proceeding in State courts.

SEC. 914. The practice, pleadings, and forms and modes of proceeding in civil causes other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the

practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding.

Sage v. Tauszky (24 Int. Rev. Rec., 12).
In re Secretary of Treasury (45 Fed. Rep., 396).
United States v. Collins (18 Int. Rev. Rec., 69).
Nudd v. Burrows (91 U. S., 441).

Proceedings on execution governed by State laws.

SEC. 916. The party recovering a judgment in any common-law cause in any circuit or district court, shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which such court is held, or by any such laws hereafter enacted, which may be adopted by general rules of such circuit or district court; and such courts may, from time to time, by general rules, adopt such State laws as may hereafter be in force in such State in relation to remedies upon judgments, as aforesaid, by execution or otherwise.

Collection of judgments for fines and penalties (sec. 1041). (Case of Louis Teuscher, 23 Int. Rev. Rec., 202.) Poor convicts law (sec. 1042).

State exemption laws govern. (*Fink v. O'Neil*, 106 U. S. (16 Otto), 272; 28 Int. Rev. Rec., 405.)

Homestead exemption. (*Allen v. Clark*, 126 Fed. Rep., 738, affirming 114 Fed. Rep., 374 and 117 ibid., 679.)

Judgment can not be opened at a term subsequent to that at which it was entered. (*Bronson v. Schulten*, 104 U. S. (14 Otto), 410; 28 Int. Rev. Rec., 231.)

If plaintiff and defendant agree, judgment may be set aside at a subsequent term. (Seat, administrator, *v. United States*, 18 Ct. Clms., 468.)

Not lawful to employ any part of the United States Army as a posse comitatus. (Act June 18, 1878 (20 Stat., 152); 16 Op. Atty. Gen., 162.)

Redemption of lands sold under execution, local laws govern. (*Brine v. Hartford Fire Insurance Co.*, 96 U. S., 627; 24 Int. Rev. Rec., 243.)

The United States circuit court, southern district of New York, made an order for the examination of Robert Boyd to discover whether he had property to satisfy judgment of the court. Boyd refused to testify, and was imprisoned for contempt of court. The Supreme Court was petitioned for a writ of habeas corpus and certiorari. The circuit court was sustained in proceedings in the matter in accordance with the laws of the State of New York, under section 916. (*Ex parte Boyd*, 28 Int. Rev. Rec., 232; 105 U. S., 647.)

Proceedings of marshal upon execution. (*Sowles v. Witters*, 46 Fed. Rep., 497; Cir. No. 331, 35 Int. Rev. Rec., 197.)

Executions in favor of United States to run in every State and Territory.

SEC. 986. All writs of execution upon judgments obtained for the use of the United States, in any court thereof, in one State, may run and be executed in any other State or in any Territory, but shall be issued from, and made returnable to, the court wherein the judgment was obtained.

Judgment records and liens of judgments.

AN ACT To regulate the liens of judgments and decrees of the courts of the United States (act of Aug. 1, 1888 (25 Stat., 357) as amended by act of Mar. 2, 1895 (28 Stat., 814)).

SEC. 1. That judgments and decrees rendered in a circuit or district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had

been rendered by a court of general jurisdiction of such State: *Provided*, That whenever the laws of any State require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State.

SEC. 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

SEC. 3. That nothing herein shall be construed to require the docketing of a judgment or decree of the United States court, or the filing of a transcript thereof, in any State office within the same county or the same parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish.

Lien of judgments in the Federal courts. (*Dartmouth Savings Bank v. Bates*, 44 Fed. Rep., 546.)

United States not required to file lien under State laws. (*United States v. Snyder et al.*, 39 Int. Rev. Rec., 189; 149 U. S., 210.)

Judgment liens not restricted by State statutes. (*Carroll v. Watkins*, 1 Abb. 474, Fed. Cas. No. 2457; *U. S. v. Humphreys*, Fed. Cas. No. 15422, 3 Hughes, 201.)

Interest.

SEC. 963. Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of six per centum a year, from the time when said bonds became due.

SEC. 966. Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State, and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State.

An act of Congress giving interest on judgments does not include the Government unless expressly named or so intended by clear inference. (First Comptroller's Opinion in Stephani's Case, 26 Int. Rev. Rec., 313, and cases there cited; *United States ex rel. v. John Sherman*, Secretary of the Treasury, 98 U. S., 567; 25 Int. Rev. Rec., 198).

Angarica v. Bayard (127 U. S., 251).

Schell v. Cochran (107 U. S., 625).

Interest on taxes. (See under secs. 3185, p. 96, and 3214, p. 111.)

Interest on claims against United States. (See under sec. 3220, p. 114.)

Interest in suits against officers upon adjustment of accounts. (See sec. 3624, p. 407.)

Interest on judgments in Court of Claims. (See secs. 1090, 1091.)

Interest only from commencement of the suit when there has been unreasonable delay in prosecuting the claims (*Sanborn v. United States*, 135 U. S., 271; 36 Int. Rev. Rec., 142; *Wightman v. United States*, 23 Ct. Cls., 148.)

Writs of error and appeals to Supreme Court.

SEC. 699. Superseded by the act establishing Circuit Courts of Appeal.

See "The Judicial Code," act of March 3, 1911.

Supreme Court has jurisdiction in an action to enforce a revenue law without regard to amount. (*Pettigrew v. United States*, 97 U. S., 385; 24 Int. Rev. Rec., 380.)

An act to provide for writs of error or appeals to the Supreme Court of the United States in all cases involving the question of the jurisdiction of the court below. (Act of Feb. 25, 1889; 25 Stat., 693.)

As to Alaska, the act of June 6, 1900, section 504 (31 Stat., 414) provides that appeals and writs of error may be taken from the district court directly to the Supreme Court in five classes of cases.

In Porto Rico (act of April 12, 1900; 31 Stat., 84) there is established a district court of the United States with jurisdiction of circuit courts of the United States. It is provided that writs of error and appeal from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories; "and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States or a treaty thereof or an act of Congress is brought in question and a right claimed thereunder is denied."

In Hawaii (act of Apr. 30, 1900, amended by act of Mar. 3, 1909) a Federal district court is established with the jurisdiction of district and circuit courts of the United States.

Circuit courts of appeals.

An Act To establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes, act of March 3, 1891 (26 Stat., 827).

No appeal allowed from district to circuit courts—Appeals to Supreme Court.

SEC. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals by writ of error or otherwise, from said district courts shall only be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had only in the Supreme Court of the United States or in the circuit court of appeals hereby established according to the provisions of this act regulating the same.

SEC. 5. [Act of Mar. 3, 1891 (26 Stat., 826).] That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes.

In cases of conviction of a capital or otherwise infamous crime.

In re Claasen (140 U. S., 200).

In any case that involves the construction or application of the Constitution of the United States.

Motes v. United States (178 U. S., 459).

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

Rice v. Ames (180 U. S., 371).

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. * * *

Section 6 provides that the judgment of the circuit courts of appeals shall be final in all cases arising * * * "under the revenue laws" * * *, but the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court, or the Supreme Court may by certiorari require any case to be certified to the Supreme Court for review. (*Railway Co. v. Pope*, 74 Fed. Rep., 1; *United States v. Union Pac. Ry. Co.*, 168 U. S., 505; *United States v. Felsenheld*, 186 U. S., 126; T. D. 525.)

Primary object of this act. (*American Construction Co. v. Jacksonville Railway Co.*, 148 U. S., 372.)

Amendments to the act establishing the circuit court of appeals, with annotation of decisions. (90 Fed. Rep., introduction.)

In none of the provisions of the act establishing the circuit courts of appeals, defining the appellate jurisdiction, either of the Supreme Court or of the circuit courts of appeals is there any indication of an intention to confer upon the United States the right to take up a criminal case of any grade after judgment below in favor of the defendant. (*United States v. Sanges*, 144 U. S., 323; *United States v. Dickinson*, 213 U. S., 92.)

A writ of error may be taken by the United States from the district or circuit court to the Supreme Court in criminal cases where indictment has been quashed if the decision was based upon the invalidity or construction of the statute upon which the indictment was founded. (Act Mar. 2, 1907, 34 Stat., 1246.)

As to circuit courts of appeals under "The Judicial Code." See chap. 6, sec. 116, et seq., act of March 3, 1911.

SEC. 1008. No judgment, decree or order of a circuit or district court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court, on writ of error or appeal, unless the writ of error is brought, or the appeal is taken within two years after the entry of such judgment, decree, or order:

Provided, That where a party entitled to prosecute a writ of error, or to take an appeal is an infant, insane person or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability.

Section 11, act of March 3, 1891; "that no appeal or writ of error, by which any order, judgment, or decree may be reviewed in the circuit court of appeals, under the provisions of this act, shall be taken or sued out except within six months after the entry of the order, judgment, or decree sought to be reviewed." (*Rutan v. Johnson*, 130 Fed. Rep., 109.)

Appeals or writs of error to review a judgment of a circuit court of appeals must be sued out within 1 year. (Sec. 6, act of Mar. 3, 1891, 26 Stat., 826.)

The statutory time for taking appeals is prescribed by act of Congress, and can not be extended by order of the court. (*Old Nick Williams Co. v. United States*, 215 U. S., 541.)

An internal revenue case may be taken from the circuit court to the circuit court of appeals, and from there to the Supreme Court when the constitutionality of an act of Congress is involved. (*Spreckels Sugar Refining Co. v. McClain*; 192 U. S., 397; T. D. 760.)

Appeals from Court of Claims to Supreme Court.

SEC. 708. All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct.

Reenacted section 243 of "The Judicial Code," act March 3, 1911.

A judgment of the Court of Claims from which no appeal is taken is just as conclusive as a decision of the Supreme Court. (*United States v. O'Grady*, 22 Wall., 641.)

No bond required of United States, etc.

SEC. 1001. Whenever a writ of error, appeal or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a circuit court, either by the United States or by direction of any Department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the Department under whose directions the proceedings were instituted.

The United States, when a plaintiff in a civil action, is entitled to the writ of attachment, and is relieved by section 1001 from giving the usual undertaking in such cases. (*United States v. Ottman*, 23 Int. Rev. Rec., 294).

Statute of Limitations.

SEC. 1047. No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: *Provided*, That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property.

AN ACT To limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws. Act of July 5, 1884 (23 Stat., 122).

That no person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, in all cases where the penalty prescribed may be imprisonment in the penitentiary, and within two years in all other cases:

Provided, That the time during which the person committing the offense is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings:

Provided further, That the provisions of this act shall not apply to offenses committed prior to its passage:

And provided further, That where a complaint shall be instituted before a commissioner of the United States within the period above

limited, the time shall be extended until the discharge of the grand jury at its next session within the district:

And provided further, That this act shall not apply to offenses committed by officers of the United States.

Suits for taxes can be brought at any time. (See decisions quoted under sec. 3214, p. 111.)

Limitation of time within which suits must be brought against sureties on official bonds five years. (See act of Aug. 8, 1888, p. 372.)

States can not pass statutes of limitation binding on the Federal Government. (*United States v. Thompson et al.*, 98 U. S., 486; 25 Int. Rev. Rec., 143.)

United States not bound by any statute of limitations unless Congress has clearly manifested its intention that they should be so bound. (*United States v. Nashville Railroad Co.*, 118 U. S., 125; *United States, v. Beebe*, 127 U. S., 354.)

The limitation laws of the State in which the suit is brought do not furnish the rule for determining whether the action is brought in time. (*Arnson v. Murphy*, 109 U. S. 238.)

When the United States voluntarily appear in a court of justice, they at the same time submit to the law and place themselves upon an equality with other litigants; but this does not apply to such defenses as laches and the statute of limitations. (*United States v. Ingate*, 1891, 48 Fed. Rep., 251.)

Certificate of probable cause.

SEC. 970. When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: *Provided*, That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent.

The decision of the court below refusing certificate of probable cause not reviewable by circuit or Supreme Court. (*United States v. Abattoir Place*, 106 U. S., 160.)

Execution not to issue against officers of revenue in cases of probable cause, etc.

SEC. 989. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

Section 3220, page 114. Payment of judgments against collectors. (*United States v. Frerichs*, 124 U. S., 315; 34 Int. Rev. Rec., 39.)

Protection afforded to officers by certificate of probable cause. (*Averill v. Smith*, 17 Wall., 82; 17 Int. Rev. Rec., 171. *Stacy v. Emery*, 97 U. S. (7 Otto), 642; 24 Int. Rev. Rec., 378. *Dunnagan v. United States*, 17 Ct. Cls., 247; 28 Int. Rev. Rec., 144.)

The Government is not liable for the torts of its officers. (*Hart v. United States*, 95 U. S., 318; *Langford v. United States*, 101 U. S., 346; *United States v. Cummings et al.*, 35 Int. Rev. Rec., 142, 130 U. S., 453.)

State of Maine v. U. S. (36 Ct. Cls., 532). See notes under Section 3220, page 114.

The order of the commissioner to the collector of the district directing him to make a seizure is in law a reasonable cause and a protection to him against damages for such action. Sections 970 and 989, Revised Statutes, are both existing laws and not inconsistent or repugnant. (*Agnew v. Haymes*, 141 Fed. Rep., 631, T. D. 955.)

Property taken under revenue laws irreplevable.

SEC. 934. All property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irreplevable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

Brice et al. v. Elliott. (22 Int. Rev. Rec., 206.)

Conflict of State and United States officers. (14 Op. Atty. Gen., 370; 19 Int. Rev. Rec., 73; *Buck v. Colbath*, 3 Wall., 334.)

Goods in the hands of the United States held for taxes can not be attached by State officers. (*Harris v. Dennie*, 3 Pet., 292; *McCullough v. Large*, 30 Int. Rev. Rec., 166.)

Compromises of claims and of cases after judgment.

SEC. 3469. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

Compromise of internal-revenue cases before judgment. (Sec. 3229, p. 123.)

Uncertainty whether the Government can obtain a verdict proper ground for compromise. (16 Op. Atty. Gen. 259.)

Forfeited recognizances. (18 Op. Atty. Gen., 277.)

Section 3469 does not extend to fines in criminal cases. (*United States v. George et al.*, 6 Blatch., 406; 12 Op. Atty. Gen., 543; 13 ibid., 479.)

Compromise of solvent claims. (16 Op. Atty. Gen., 617; 25 Int. Rev. Rec., 29.)

Contra. (MacVeagh, 27 Int. Rev. Rec., 334; 17 Op. Atty. Gen., 213.)

A claim can not be compromised of whose collectibility in full there is no doubt (Harmon). (21 Op. Atty. Gen. 264.)

See also 23 Op. Atty. Gen., 18; 633.

Government's claim to real property can not be compromised. (16 Op. Atty. Gen., 385.)

No power to compromise taxes. (*Dorsheimer v. United States*, 74 U. S. (7 Wall.), 166; 10 Int. Rev. Rec., 131; 2 Ct. Cls., 103.)

No authority to compromise cases under section 32, act of July 24, 1897.

The Attorney General may, however, compromise or settle such cases. (T. D., 21270, 1899.)

Remission.

The Secretary of the Treasury has authority to remit or mitigate fines, penalties, or forfeitures and to remove disabilities before or after judgment or decree, and until the money is actually paid into the Treasury. (*United States v. Morris*, 10 Wheat., 246; secs. 5292, 5293, R. S.)

The power to remit penalties is intrusted to the Secretary of the Treasury alone, and there is no appeal from his decision.

Pardons.

The President's power under the Constitution to grant pardons (Art. II, sec. 2) includes the power of remitting fines, penalties, and forfeitures. (*Ex parte Garland*, 4 Wall., 333.)

Effect of pardon. (*Weimer v. Reynolds*, 24 Int. Rev. Rec., 372; *Knote v. United States*, 95 U. S., 149; 24 Int. Rev. Rec., 4; *United States v. McKee*, 23 *ibid.*, 338; Fed. Cas. No. 15,688.)

Pardon of officer bar to an action on official bond assigning same act as a breach. (*United States v. Cullerton*, 24 Int. Rev. Rec., 68.)

Pardon releases property seized for same offense. (*Osborn v. United States*, 91 U. S. (1 Otto), 474.)

Does not relieve from tax. (*United States v. Roelle et al.*, 24 Int. Rev. Rec., 332.)

A pardon is not complete until delivery. (*In re Moses De Puy*, 10 Int. Rev. Rec., 34.)

Act providing for parole of United States prisoners. Act of June 25, 1910. (36 Stat., 819.)

Employment of attorneys or counsel.

SEC. 189. No head of a department shall employ attorneys or counsel at the expense of the United States, but when in need of counsel or advice shall call upon the Department of Justice, the officers of which shall attend to the same.

Opinions of the Attorney General; the effect of his advice. (5 Op. Atty. Gen., 97; 6 *ibid.*, 334; 7 *ibid.*, 699; 9 *ibid.*, 37.)

Questions of pure law actually arising in the administration of the Treasury Department, and requiring the personal consideration of the Secretary, may be referred to the Solicitor of the Treasury or to the Attorney General. If referred to the latter, however, his answer should be regarded by the department as law until withdrawn by him or overruled by the courts. (20 Op. Atty. Gen., 655.)

A request for an opinion must not relate to a mere moot question. (21 Op. Atty. Gen., 509.)

There should be a case actually arising. (24 Op. Atty. Gen., 59; 27 *ibid.*, 49.)

Attorney General to provide counsel on investigation of claims.

SEC. 364. Whenever the head of a Department or Bureau gives the Attorney-General due notice that the interests of the United States require the service of counsel upon the examination of witnesses touching any claim, or upon the legal investigation of any claim, pending in such Department or Bureau, the Attorney-General shall provide for such service.

AN ACT To authorize the commencement and conduct of legal proceedings under the direction of the Attorney General, approved, June 30, 1906. (34 Stat., 816.)

That the Attorney-General or any officer of the Department of Justice, or any attorney or counselor specially appointed by the Attorney-General under any provision of law, may, when thereunto specifically directed by the Attorney-General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which district attorneys now are or hereafter may be by law authorized to conduct, whether or not he or they be residents of the district in which such proceeding is brought.

Duties of district attorneys to prosecute and to appear for collectors, etc.

SEC. 771. It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned, and, unless otherwise instructed by the Secretary of the Treasury, to appear in behalf of the defendants in all suits or proceedings pending in his district against collectors, or other officers of the revenue, for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury.

"Infamous" crimes can not be prosecuted by information. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces," etc. (Constitution, fifth amendment.)

Imprisonment at hard labor for a term of years is an infamous punishment. (Wilson ex parte, 114 U. S., 417; 31 Int. Rev. Rec., 224.)

A crime punishable by imprisonment in a state's prison or penitentiary with or without hard labor is an "infamous" crime. (Mackin v. United States, 117 U. S., 348.)

It is the duty of a district attorney to prosecute suits to enforce against certain property the statutory lien for internal-revenue taxes. (Bliss v. U. S., 37 Fed. Rep., 191.)

Duty of Government to defend its officers when sued for doing what the law requires. (9 Op. Atty. Gen., 52.)

The act of March 3, 1887 (24 Stat., 505), providing for the bringing of suits against the Government in the United States district and circuit courts, makes it the duty of the district attorney to appear and defend the interests of the Government in such suits and within sixty days after the service of petition upon him to file a plea, answer, or demurrer on the part of the Government, and notice of any set-off or counter claim.

Suits by or against officers not to abate on their death, resignation, or expiration of their term of office. (Act of Feb. 8, 1899, 30 Stat., 822.)

By the acts of June 27, 1898, and July 1, 1898, the right of Government officers to bring suits in the circuit and district courts for their fees or salaries was repealed, thus removing what had been found to be a serious difficulty in the workings of the act of March 3, 1887.

District attorneys to report to Commissioner of Internal Revenue.

SEC. 774. When any suit or proceeding arising under the internal-revenue laws, to which the United States are party, or any suit or proceeding against a collector or other officer of the internal revenue, wherein a district attorney appears, is commenced, the attorney for the district in which it is brought shall immediately report to the Commissioner of Internal Revenue the full particulars relating to the same; and he shall, immediately after the end of each term of the court in which such suit or proceeding is pending, forward to the said Commissioner a full and particular statement of its condition.

Duty of commissioner to make regulations for observance of district attorneys and marshals. (Sec. 3215, p. 111.)

Regulations No. 12, revised.

Duty of district attorneys as to prosecution and reports.

SEC. 838. It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper pro-

ceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue for their direction.

* * * * *

That portion of this section referring to compensation of district attorneys is omitted, as made inoperative by the act of May 28, 1896. (29 Stat., 178).

Duty of collectors to report violations of law to district attorneys. (Sec. 3164, p. 77.)

Reports of marshals.—Marshals are required to report proceedings under process issued to them in internal-revenue cases. (Regulations No. 12, revised, p. 17.)

Instructions to report status of judgment debtors. (T. D. 703.)

Warrants of arrest.

SEC. 19. [*Act of May 28, 1896 (29 Stat., 184), reenacted by act Mar. 2, 1901 (31 Stat., 956).*] * * * Warrants of arrest for violations of internal-revenue laws may be issued by United States commissioners upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector or deputy collector of internal revenue, or revenue agent or private citizen, but no such warrant of arrest shall be issued upon the sworn complaint of a private citizen unless first approved in writing by a United States district attorney. * * *

Under the act of May 28, 1896, the issue of a warrant upon a complaint made by a field deputy marshal, which was approved by the district attorney by telephone, even though subsequently reduced to writing, is not authorized. (VI Comp. Dec., 113.)

Fees of United States marshals—illegal warrants. (IV Comp. Dec., 338, 449.)

Deputy collectors swearing to complaints. (T. D. 510.)

Insufficiency of warrant. (U. S. v. Sapinkow, 90 Fed. Rep., 654.)

Warrant must particularly name or describe the person. (West v. Cabell, 153 U. S., 85, 86.)

Serving John Doe warrants. (16 Comp. Dec., 891.)

Arrest of persons while operating illicit distillery. (Sec. 9, act Mar. 1, 1879, p. 175.)

Arrests without warrant. (14 Int. Rev. Rec., 27; 24 ibid., 349, 378.)

A marshal has the right to arrest upon visible evidence of crime. (U. S. v. Fullehart, 106 Fed. Rep., 911.)

* * * *Act of August 18, 1894, sundry civil appropriation act (28 Stat., 416).* And hereafter no part of any money appropriated to pay any fees to the United States commissioners, marshals, or clerks shall be used for any warrant issued or arrest made, or other fees in prosecutions under the internal revenue laws, unless said fees have been taxed against and collected from the defendant, or unless the prosecution has been commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district attorney, collector, or deputy collector of internal revenue or revenue agent, setting forth the facts upon information and belief, and approved either before or after such arrest by a circuit or district judge or the attorney of the United States in the district where the offense is alleged to have been committed or the indictment is found:

Provided, That it shall be the duty of the marshal, his deputy, or other officer who may arrest a person charged with any crime or offense, to take the defendant before the nearest circuit court commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint; and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof.

Construction of statute. (*U. S. v. Puleston*, 106 Fed. Rep., 294.)

Clerks of courts to report to Commissioner as to all moneys paid into court in internal-revenue cases, etc.

SEC. 797. [*As amended by sec. 2, act of Mar. 1, 1879 (20 Stat., 327.)*] Every clerk of a circuit or district court shall, within thirty days after the adjournment of each term thereof, forward to the Solicitor of the Treasury a list of all judgments and decrees, to which the United States are parties, which have been entered in said court, respectively, during such term, showing the amount adjudged or decreed in each case, for or against the United States, and the term to which execution thereon will be returnable. *He shall also, at the close of each quarter, or within ten days thereafter, report to the Commissioner of Internal Revenue all moneys paid into court on account of cases arising under the internal-revenue laws, as well as all moneys paid on suits on bonds of collectors of internal revenue. The report shall show the name and nature of each case, the date of payment into court, the amount paid on account of debt, tax, or penalty, and also the amount on account of costs. If such money, or any portion thereof, has been paid by the clerk to any internal-revenue officer or other person, the report shall show to whom each of such payments was made; and if to an internal-revenue officer, it shall be accompanied by the receipt of such officer.*

Section 5, act of February 22, 1875 (18 Stat., 334), provides that if any clerk of any district or circuit court of the United States shall willfully refuse or neglect to make any report or other document required by law to be by him made, or shall willfully refuse or neglect to forward any such report or document to the department, officer, or person to whom by law the same should be forwarded, the clerk so offending shall be removed from office and shall not be eligible to any appointment as clerk or deputy clerk for the period of two years next after such removal.

Section 6 of the same act also provides additional punishment, by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, in the discretion of the court.

Clerk of court failing to deposit moneys, etc. (Sec. 99 of the criminal code, act Mar. 4, 1909, 35 Stat., 1088.)

Clerks of court to keep indices of judgment records. (See act Aug. 1, 1888, p. 393.)

Clerks are instructed in all cases in the several courts arising under the internal-revenue laws, where moneys are recovered and paid in for the United States, to pay over such moneys, including costs, to the collectors of internal revenue under the provisions of section 3216, R. S.

Collectors will furnish the clerks with receipts in duplicate on Form No. 540, the original to be forwarded to the Commissioner with the clerk's quarterly report (Form 158), the duplicate to be retained by the clerk.

(See circular to clerks of United States courts issued by the Attorney General Apr. 20, 1898, T. D. No. 19306, 1898; also, Instructions to attorneys, clerks, etc., by the Department of Justice, Apr. 1, 1904, T. D. 754; Regulations, No. 12, rev. Apr. 18, 1904, p. 21.)

SEC. 6. [Act of May 28, 1896 (29 Stat., 178), *Legislative, executive, and judicial appropriation act.*] That, on and after the first day of July, eighteen hundred and ninety-six, all fees and emoluments authorized by law to be paid to United States district attorneys and United States marshals shall be charged as heretofore, and shall be collected, as far as possible, and paid to the Clerk of the court having jurisdiction, and by him covered into the Treasury of the United States.

CHAPTER 2.

Duties of officers charged with receiving or disbursing public moneys—Penalties for embezzlement and for official misconduct—Proceedings against delinquent officers—Evidence—Transcripts, etc.

Moneys to be deposited without deduction.

SEC. 3617. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

The next section relates to the proceeds of sales of material. III Comp. Dec. 149.

It seems that no express authority has been given the executive departments to sell old or disused material and supplies. Such practice appears to have grown up, however, for reasons of economy, and is apparently recognized in the provisions of sections 197 and 3618 of the Revised Statutes, which provide for the accounting by Government officers for moneys received from the sale of old material and supplies. (28 Op. Atty. Gen., 203.)

Section 3619 provides that "Every officer or agent who neglects or refuses to comply with the provisions of section 3617 shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled."

(15 Op. Atty. Gen., 387. 24 Int. Rev. Rec., 130; 26 id., 230.)

(See sections 3210, 3216, and 3450 R. S., pp. 107, 111, 357. XVI Comp. Dec., 309.)

[Extract from sundry civil appropriation act for the fiscal year ending June 30, 1909, approved May 27, 1908 (35 Stat., 325).]

After June thirtieth, nineteen hundred and eight, collectors of internal revenue shall pay daily into the Treasury of the United States, under instructions of the Secretary of the Treasury, the gross amounts of all collections of whatever nature made, by authority of law, and the same shall be covered into the Treasury as internal-revenue collections. (T. D. 1373, Circular No. 725, June 5, 1908.)

Duty of disbursing officers.

SEC. 3620. [As amended by the act of Feb. 27, 1877 (19 Stat., 240).] It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of

the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.

See section 87 of the Criminal Code, act of March 4, 1909 (35 Stat., 1105,) page 409, providing penalty for unlawfully depositing.

Checks of disbursing officers. (15 Op. Atty. Gen., 288.)

Depositories to be designated by Secretary, section 3211, page 108.

Regulation for the deposit of public moneys. (Dept. Cir. No. 47, Apr. 5, 1905.)

Public moneys and official checks of United States disbursing officers. (Dept. Cir. No. 102, Dec. 7, 1906; Dept. Cir. No. 125, Aug. 14, 1897, Reg. No. 2, revised, p. 93; Dept. Cir. No. 17, Mar. 19, 1908, Reg. No. 2 revised, p. 96.)

Deposit of unexpended balances of annual appropriations, etc. (Dept. Cir. No. 133, Dec. 15, 1903.)

Every person having moneys of the United States must pay to Treasurer, etc., and take receipt.

SEC. 3621. [As amended by sec. 5, act May 28, 1896 (29 Stat., 140).] Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer and Assistant Treasurer, or some public depository of the United States, without delay, and in all cases within thirty days of their receipt.

And the Treasurer, the Assistant Treasurer, or the public depository shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor.

The Secretary of the Treasury prescribed regulations as to "proper disposition of certificates of deposit." (Dept. Cir. No. 46, July 1, 1907.)

Deposit of public moneys. (Cir. No. 47, Apr. 5, 1905.)

See section 91, Criminal Code, act March 4, 1909 (35 Stat., 1105), page 410, providing penalty for failure to deposit as required.

SEC. 4. [Act of Aug. 30, 1890 (26 Stat., 371), sundry civil appropriation act.] That hereafter all disbursing officers of the United States shall render their accounts quarterly * * * but the Secretary of the Treasury may direct any or all such accounts to be rendered more frequently when in his judgment the public interest may require.

Accounts to be rendered.

SEC. 3622. [As amended by sec. 12, act of July 31, 1894 (28 Stat., 209).] Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall

be required to furnish satisfactory evidence of having complied with the provisions of this section. * * * Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of *Departments*, as the public interest may require.

Collectors of internal revenue shall render their revenue accounts quarterly. (Act May 27, 1908, 35 Stat., 325.)

Collectors, acting as disbursing agents, report transactions of funds advanced to them from the several appropriations on Form 44. This report is rendered monthly, and under section 12 of the act of July 31, 1894, should be mailed or otherwise sent to the Commissioner of Internal Revenue within ten days after the end of the month to which it relates. (Reg. No. 2, revised, p. 68.)

See section 90, Criminal Code, act March 4, 1909 (35 Stat., 1105), page 410, providing penalty for failure to render accounts.

The provision giving the Secretary of the Treasury power in particular cases to extend the time prescribed for the rendition of accounts does not authorize him to institute a new system of rendering accounts. (16 Op. Atty. Gen., 222.)

Rendition of accounts. (19 Op. Atty. Gen., 557; 36 Int. Rev. Rec., 173.)

The Dockery commission was organized by the act of March 3, 1893.

The "Dockery bill" was included in the legislative, executive, and judicial appropriation Act for the fiscal year 1895. (Act of July 31, 1894, 28 Stat., 162.) The act went into effect October 1, 1894, and provided that hereafter the First Comptroller shall be known as the Comptroller of the Treasury.

It abolished the office of Commissioner of Customs, Second Comptroller, and other offices, and modified the method of settlement of accounts.

The act prescribes the powers and duties of the accounting officers of the Treasury Department (28 Stat., 205-211). (See Digest of the Decisions of the Comptroller of the Treasury, 1902.)

Section 22 contains the following paragraph:

"It shall also be the duty of the heads of the several Executive Departments and of the proper officers of other Government establishments, not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section 12 of this act, before their transmission to the Auditors, and for the execution of other requirements of this act in so far as the same relate to the several departments or establishments."

Regulations governing the revision, by the Comptroller of the Treasury, of accounts settled by the Auditors. (Dept. Cir. 87, Apr. 25, 1895; Treasury Bookkeeping, Dept. Cir. 38, June 17, 1907; Dept. Cir. 56, July 14, 1908.)

Transmittal of accounts.

SEC. 12. [Act of July 31, 1894 (28 Stat., 162), as amended by sec. 4, act of May 28, 1896 (29 Stat., 140).] All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons:

Provided, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirements of mailing or otherwise sending accounts, as

aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them:

Provided further, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President, or in the event of the absence from the seat of Government, or sickness of the President, an order of the Secretary of the Treasury, in the particular case shall be necessary to authorize the advance of money requested:

And provided further, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.

The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers and administrative departments and offices of the Government as were, respectively, at any time during the last preceding fiscal year delinquent in rendering or transmitting accounts to the proper offices in Washington and the cause therefor, and in each case indicating whether the delinquency was waived, together with such officers, including postmasters and officers of the Post-Office Department, as were found upon final settlement of their accounts to have been indebted to the Government, with the amount of such indebtedness in each case, and who, at the date of making report, had failed to pay the same into the Treasury of the United States. * * *

Instructions to carry into effect the recommendations of the Committee on Department Methods. (Dept. Cir. 52, July 29, 1907.)

Circular relative to transmittal of accounts, Department No. 114, dated August 16, 1894.

Transmittal of accounts and advances of funds. (Dept. Cir. 25, T. D. 18925, 1898.)

Distinct accounts required according to appropriation.

SEC. 3623. All officers, agents, or other persons, receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them.

Suits to recover money from officers regulated.

SEC. 3624. Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the (First) Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury.

Duties of First Comptroller conferred on Comptroller of Treasury (Dockery bill), act of July 31, 1894 (28 Stat., 162).

Distress warrant.

SEC. 3625 [as amended by sec. 4, act July 31, 1894 (28 Stat., 162)]. Whenever any collector of the revenue, receiver of public money, or other officer who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or pay over the same in the manner or within the time required by law, it shall be the duty of the *proper Auditor* to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties, directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they, or either of them, reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively.

Section 3217, page 112.

Proceedings by distress warrant have not been resorted to for many years. The remedy by suit on bond is deemed preferable.

Failure of disbursing officer to account—Duty thereupon of Auditor and Solicitor of Treasury.

SEC. 3633 [as amended by sec. 4, act of July 31, 1894 (28 Stat., 162)]. Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the *proper Auditor*, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the six preceding sections.

The six preceding sections referred to, viz, sections 3627, 3628, 3629, 3630, 3631, 3632, relate to proceedings by warrant of distress, not usually resorted to. See section 90, act of March 4, 1909 (35 Stat., 1105,) page 410.

Rights of United States reserved.

SEC. 3638. Nothing contained in the provisions of this Title relating to distress-warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands.

Duties of officers as custodians of public moneys to safely keep, etc.

SEC. 3639. The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land-offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in

their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law.

The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sum for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments.

See sections 86, 87, 88, 89, 90, 91, and 92 of the Criminal Code, act March 4, 1909 (35 Stat., 1105).

Entry to be kept of sums received and of transfer and payment.

SEC. 3643. All persons charged by law with the safe-keeping, transfer, and disbursement of the public moneys, other than those connected with the Post-Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer.

Embezzlement: Penalty for requiring receipt for larger sum than that actually paid.

[§ 5483.] **SEC. 86 [of Criminal Code, act of Mar. 4, 1909 (35 Stat., 1105)].** Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years.

Embezzlement: Penalty for disbursing officer unlawfully depositing, converting, loaning, or transferring public money.

[§ 5488]. **SEC. 87 [of the Criminal Code, act of Mar. 4, 1909 (35 Stat., 1105)].** Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer or any assistant treasurer, or any authorized depository, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

See section 3620, page 404, and section 96 of the Criminal Code, act of March 4, 1909 (35 Stat., 1106).

Section 88 of the Criminal Code, act of March 4, 1909 (35 Stat., 1105) provides penalty for failure of Treasurer of United States, assistant treasurer, or any public depository to safely keep moneys deposited.

Embezzlement: Penalty for custodians of public money failing to safely keep, etc.

[§ 5490.] SEC. 89 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1105)]. Every officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

Collector or receiver of public money excused from paying if prevented by act of God or the public enemy. (*United States v. Thomas*, 15 Wall., 337.)

Felonious taking or carrying away of public moneys in the custody of a receiver without fault or negligence on his part, not any defense on the bond. (*United States v. Prescott*, 3 How., 578; also *United States v. Dashiell*, 4 Wall., 182; *Boyden v. United States*, 13 Wall., 17.)

Embezzlement: Penalty for failure of officer or agent to render accounts, etc.

[§ 5491.] SEC. 90 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1105)]. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled and imprisoned not more than ten years.

Failure to make reports. See section 101 of the Criminal Code, act of March 4, 1909 (35 Stat., 1107), page 412.

Penalty for falsification of accounts and making false reports, by persons in the employ of the United States. Fine of not more than \$5,000, or imprisonment not more than ten years, or both. Act of March 4, 1911 (36 Stat., 1355).

Embezzlement: Penalty for failure to deposit as required.

[§ 5492.] SEC. 91 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1105)]. Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years.

Record evidence of embezzlement.

[§ 5494.] SEC. 93 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1105)]. Upon the trial of any indictment against any person for embezzling public money under any provision of the six preceding sections, it shall be sufficient evidence, *prima facie*, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money.

Refusal to pay any draft, etc., *prima facie* evidence of embezzlement.

[§ 5495.] SEC. 94 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1106)]. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, *prima facie* evidence of such embezzlement.

Evidence of conversion.

[§ 5496.] SEC. 95 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1106)]. If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher.

Unlawfully receiving, etc., to be embezzlement—Embezzlement by internal-revenue officer or employee and others.

[§ 5497.] SEC. 96 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1106)]. Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

Embezzlement by internal-revenue officer.

[Act Feb. 3, 1879, § 5497.] SEC. 97 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1106)]. Any officer connected with, or employed in, the Internal-Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same

shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both.

See section 3639, page 408.

Application of laws imposing punishment on internal-revenue officers to certain other classes of persons. (Sec. 3169b, p. 83.)

Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted, or into whose hands it has lawfully come; and it differs from larceny in the fact that the original taking of the property was lawful, or with the consent of the owner, while in larceny the felonious intent must have existed at the time of the taking. (Moore v. United States, 160 U. S., 268.)

Penalty for clerks and other officers of United States court failing to deposit moneys.

[§ 5504.] SEC. 99 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1106)]. Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both; but nothing herein shall be held to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

Section 3617, page 404.

Penalty for receiving money belonging in the registry of the court.

[§ 5505.] SEC. 100 [*of the Criminal Code, act of Mar. 4, 1909* (35 Stat., 1107)]. Whoever shall knowingly receive, from a clerk or other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be punished as prescribed in the preceding section.

Penalty for failure to make reports.

[§ 1780.] SEC. 101 [*of the Criminal Code, Act of Mar. 4, 1909* (35 Stat., 1107)]. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined not more than one thousand dollars.

Penalty for making false reports. Act of March 4, 1911.

Disbursing and collecting officers forbidden to trade in public funds or property.

[§ 1788; § 1789.] SEC. 103 [*of the Criminal Code, Act of Mar. 4, 1909* (35 Stat., 1107)]. Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States.

Certain business forbidden to clerks in Treasury Department. (Sec. 244, p. 436.)

Transcripts from books, etc., of the Treasury, to be evidence in suits against delinquents.

SEC. 886. When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Register and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the Register, or by such Auditor, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit.

Soule v. United States (100 U. S. (10 Otto), 8; 26 Int. Rev. Rec., 4); *United States v. Hunt* (105 U. S. (15 Otto), 183; 28 Int. Rev. Rec., 134).

The form of certificate proper to be used under section 886 is discussed by Mr. Justice Harlan in *United States v. Pinson* (102 U. S., 548; 27 Int. Rev. Rec., 62).

The transcripts from the books and proceedings of the Department of the Treasury and the copies of bonds, contracts, and other papers provided for in section 886 of the Revised Statutes shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department (sec. 10, act of Mar. 2, 1895; 28 Stat., 809).

Section 886 applies *only* to certifying transcripts from the books and proceedings of the Treasury Department and copies of bonds, contracts, or other papers relating to or connected with the settlement of an account *when suit is brought* in any case of delinquency of a revenue officer or other person accountable for public money.

Transcripts and copies. How furnished. (Department Circular No. 56, June 27, 1906; *Laffan v. U. S.*, (122 Fed. Rep., 333; T. D. 653).)

See section 882, R. S., p. 391.

Effects of certified transcripts from the books of the Treasury Department as evidence in actions against officers accountable for public moneys. (*U. S. v. Pierson*, 145 Fed. Rep., 814.)

Transcripts from books, etc., of the Treasury in indictments for embezzlement of public moneys.

SEC. 887. Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section.

Extracts may be given in evidence. (*United States v. Gaussen*, 19 Wall., 198.)

It is the seal which authenticates the transcript, and not the signature of the Secretary. (*Smith v. United States*, 5 Pet., 292.)

Delinquents for public money: Judgment at return term unless, etc.: credits.

SEC. 957. When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court, (the United States attorney being present,) makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the accounting officers of the Treasury, and rejected; specifying in the affidavit each particular claim so rejected, and that he cannot then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads non est factum, or makes a motion to the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit. And no continuance shall be granted except as herein provided.

As to credits, see *United States v. Flanders* (112 U. S., 88; 30 Int. Rev. Rec., 397).

Judgment against a defaulting collector. (*United States v. Ingate* (1891), 48 Fed. Rep., 251).

See section 951, page 424, as to claims for credit in suits of United States against individuals.

Notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials, and fixing a limitation of time within which suits shall be brought against said sureties upon said bonds.

Act of August 8, 1888 (25 Stat., 387). See page 372.

CHAPTER 3.

PROVISIONS OF THE CRIMINAL CODE, ACT OF MARCH 4, 1909 (35 STAT., 1088).

[Repealed sections of the Revised Statutes are noted in brackets.]

Penalties for perjury—Obstructing process—Resisting officers—Rescuing prisoners or property—Falsely assuming to be an officer—Bribery—Conspiracy—Destroying public records—Stealing public property—Receiving stolen Government property—Counterfeiting public records, securities, and stamps—Making false claims, etc.—Provisions relative to distilled spirits.

Perjury; penalty for.

SEC. 125. [5392 R. S.] Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and

shall be fined not more than two thousand dollars and imprisoned not more than five years.

Indictment for perjury. (*United States v. William K. Smith*, 12 Int. Rev. Rec., 135; *United States v. McConaughy*, 34 Int. Rev. Rec., 80; *United States v. Edwards*, 43 Fed. Rep., 67.)

Powers of notaries public to administer oaths. (*United States v. Hall*, 131 U. S., 50.) See section 1778.

The oath must be administered in a proceeding that is valid and regular. It must be authorized by law. The false testimony must be material, and the oath must be administered by one having legal authority to administer it. (See cases cited in *United States v. Bedgood*, 49 Fed. Rep., 54.)

U. S. v. Lamson (165 Fed. Rep., 80).

The oath may be administered by a deputy collector. (*U. S. v. Hardison*, 135 Fed. Rep., 419.)

Obstructing or resisting officer in serving writ; penalty.

SEC. 140. [5398 R. S.] Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States commissioner, or shall assault, beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process, shall be fined not more than three hundred dollars and imprisoned not more than one year.

United States v. Terry (41 Fed. Rep., 771).

Obstructing internal-revenue officer. (3177, p. 90.)

Distiller obstructing officer. (Sec. 3276, p. 170.)

Deputy marshal an officer under this section. (17 Fed. Rep., 150.)

Rescue of prisoners; penalty.

SEC. 143. [5401 R. S.] Whoever, by force, shall set at liberty or rescue any person who, before conviction, stands committed for any capital crime; or whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than five hundred dollars and imprisoned not more than one year.

Taking seized property from custody of revenue officer, etc.; penalty.

SEC. 65. [5447 R. S.] Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizure, in the execution of his duty, with intent to commit a bodily injury upon him or to deter or

prevent him from discharging his duty, shall be imprisoned not more than ten years.

SEC. 71. [5446 R. S.] Whoever shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than three hundred dollars and imprisoned not more than one year.

Rescuing property seized by collector. (Sec. 3177, p. 90; secs. 65 and 71 of the Criminal Code, act of Mar. 4, 1909; 35 Stat., 1100, 1101.)

Seized property irrepleviable. (Sec. 934, p. 399.)

Discharging deadly weapon at person authorized to make searches or seizures. (Sec. 65 of the Criminal Code, act of Mar. 4, 1909; 35 Stat., 1100.)

Falsely assuming to be a Government officer; penalty.

SEC. 66. [5448 R. S.] Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be fined not more than five hundred dollars and imprisoned not more than two years.

SEC. 32. [5448a, act of April 18, 1884.] Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any Department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

United States *v.* Brown (1902), (119 Fed. Rep., 482, indictment under sec. 5448).

Bribery; penalty.

SEC. 39. [5451 R. S.] Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered,

promised, given, made, or tendered, and imprisoned not more than three years.

An indictment for offering an internal-revenue officer a bribe to set fire to a distillery situated within the limits of a State is not cognizable by the Federal courts, since there are no common-law offenses against the United States, and section 5451, which makes it a crime to offer to bribe an officer of the United States with intent to influence him to do or omit to do any act in violation of his lawful duty, applies only to acts within the official functions of the officer. (*United States v. Gibson* (1891), 47 Fed. Rep., 833.)

United States officers accepting bribes; penalty.

SEC. 117. [5501 R. S., 5502 R. S.] Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.

Sections 110, 112, 113, and 114 of the Criminal Code relate to Members of Congress, Delegates in Congress, and Resident Commissioners receiving bribes, etc.

Internal-revenue officer accepting bribes. (Sec. 3169, p. 81.)

District attorney or marshal accepting bribes. (Sec. 3170, p. 83.)

Extortion by informers; penalty.

SEC. 145. [5484 R. S.] Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both.

Extortion by officer, clerk, agent, or employee of the United States. (Sec. 85 of the Criminal Code, act of Mar. 4, 1909; 35 Stat., 1102.)

Extortion by internal-revenue officer or agent. (Sec. 3169, p. 81.)

Conspiracy to prevent persons from accepting or holding office under United States or to injure an officer in his person or property; penalty.

SEC. 21. [5518 R. S.] If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property

on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Conspiracy to defraud; penalty.

SEC. 37 [5440 R. S.] If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

This section was originally enacted as part of the internal-revenue act of June 30, 1864 (13 Stat., 239), and so remained until the revision; now it is under the title "Offenses against the operation of the Government" in the criminal code.

A conspiracy to defraud the Government, though it may be directed to the revenue as its object, is punishable by the general law against all conspiracies, and can hardly be said, in any just sense, to arise under the revenue laws. *United States v. Hirsch* (100 U. S. (10 Otto), 33; 25 Int. Rev. Rec., 375.)

What is conspiracy? (*United States v. Rindskopf et al.*, 21 Int. Rev. Rec., 326; *U. S. v. Hamilton*, 22 Int. Rev. Rec. 106.)

There must be an overt act to make the offense complete. (*Hyde v. Shine*, 199 U. S. 62.)

The mere combining or confederating to commit the fraud is sufficient without actual perpetration of it, if anyone of the parties has taken a step toward its execution. (*U. S. v. Callicott*, Fed. Cas. No. 14710, 7 Int. Rev. Rec., 177.)

Declaration of co-conspirators. (*United States v. Wm. McKee*, 22 Int. Rev. Rec., 57.)

Limitation on prosecution under this section. (*United States v. Owen et al.*, 34 Int. Rev. Rec., 3.)

History of the conspiracy to defraud the revenue of the tax on spirits in St. Louis from 1871 to 1875. (*United States v. McKee*, 3 Dill., 546; Fed. Cas. No. 15686; *United States v. Babcock*, 3 Dill., 583; 22 Int. Rev. Rec., 86.)

Requisites of indictment for conspiracy to defraud. (*United States v. Ulrici*, 3 Dill., 532.)

An indictment charging conspiracy to "commit an offense against the United States" must state an agreement to do acts which, if done, would constitute a specific offense, and where an intent is an essential part of such offense such intent must be averred. (*United States v. Green*, 136 Fed. Rep., 618.)

Destroying, carrying away, etc., public records; penalty.

SEC. 128 [5403 R. S.] Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both.

Destroying records by officer in charge; penalty.

SEC. 129 [5408 R. S.] Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall willfully and unlawfully conceal, remove,

mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

Carrying away without authority and unlawfully using papers relating to claims, etc.: penalty.

SEC. 40 [5454 R. S.]. Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Robbery or larceny of personal property of the United States: penalty.

SEC. 46 [5456 R. S.]. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Embezzling or stealing public property or receiving and retaining in possession property stolen; penalty.

SEC. 47 [Sec. 1, Act of March 3, 1875 (18 Stat., 479)]. Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 48 [Sec. 2]. Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

Forging, counterfeiting, etc., bid, bond, public record, etc.; penalty.

SEC. 28 [5418 R. S., 5479 R. S.]. Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter or publish as true, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be fined not more than one thousand dollars, or imprisoned not more than ten years, or both.

Counterfeiting United States securities and stamps; penalty.

SEC. 148 [5414 R. S.]. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

SEC. 147 [5413 R. S.]. The words "obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national-bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress.

See also sections 151, 152, 153, 154.

Counterfeit money, act of February 10, 1891. (*United States v. Kuhl* (1898), 85 Fed. Rep., 624.)

Making or presenting false, fictitious, or fraudulent claims; penalty.

SEC. 35. [5438 R. S.] Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or who-

ever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years.

Deputy marshal presenting false claim. (U. S. v. Strobach, 48 Fed. Rep., 902.)

Provisions of the Criminal Code relative to distilled spirits.

AN ACT To codify, revise, and amend the penal laws of the United States, approved March 4, 1909 (35 Stat., 1136), taking effect January 1, 1910.

SEC. 238. Interstate shipment of intoxicating liquors; delivery of to be made only to bona fide consignee.

SEC. 239. Common carrier, etc., not to collect purchase price of interstate shipment of intoxicating liquors.

SEC. 240. Packages containing intoxicating liquors shipped in interstate commerce to be marked as such.

SEC. 238. Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 239. Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the

United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

SEC. 240. Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

Labeling of liquors under section 240, Criminal Code, act of March 4, 1909—Instructions to customs officers. (Op. Atty. Gen., Dec. 16, 1909; T. D. 30393.)

Sections 238, 239, and 240 of the Criminal Code, effective January 1, 1910, are part of Chapter IX, entitled "Offenses against foreign and interstate commerce," and are not required to be enforced through the office of Internal Revenue. (T. D. 1589.)

Criminal Code, modification of T. D. 1589.—Instructions to revenue officers relative to seizure of property forfeited for violation of section 240 of the Penal Code, effective January 1, 1910—According to Attorney General, right to seize vested in any person. (T. D. 1610.)

Carriers are prohibited from giving information concerning shipments handled by them, except in response to legal process from the court or proper State or United States officer. (Sec. 15, act Feb. 4, 1887, "An act to regulate commerce," amended by sec. 12, act June 18, 1910, 36 Stat., 551.)

CHAPTER 4.

Claims—Payment to person in arrears—Set-offs—Credits—Priority of Government—Appropriations—Attorneys before departments—Duplicate checks—Penalty envelopes—Telegrams—Disposition of useless paper, etc.

Claims to be adjusted in the Treasury Department.

SEC. 236. All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.

The doctrine that the United States can not be sued without its consent examined and reaffirmed. (*United States v. Lee*, 106 U. S., 196; 29 Int. Rev. Rec., 1.)

The United States, by various acts of Congress, have consented to be sued in their own courts in certain classes of cases; but they have never consented to be sued in the courts of a State in any case. (*Stanley v. Schwalby*, 162 U. S., 255.)

The United States have never, either by the act of March 3, 1887, or by any other law, permitted themselves to be sued for torts committed by their officers. (*Hill v. United States*, 149 U. S., 593.)

A court of claims was created by the act of February 24, 1855 (sec. 1049). Cases arising under the revenue laws not within the jurisdiction of the Court of Claims. (*Nichols v. United States*, 7 Wall., 129.)

Jurisdiction of the Court of Claims. "The Judicial Code" (act of March 3, 1911, sec. 145, 36 Stat., 1087).

Section 1063, as to head of Department transmitting claims to the Court of Claims. (*Hart v. United States*, 15 Ct. Cls., 414; *United States v. New York*, 160 U. S., 598.)

Secretary can not legally by departmental order change a practice or course of office prescribed by statute for settlement of accounts. (19 Op. Atty. Gen., 177.)

Power of Auditor and Comptroller stated. (*Waters v. United States*, 21 Ct. Cls., 37, 38.)

The rule that a final decision upon a knowledge of all the facts made by an officer authorized to decide on claims against the Government is not liable to be reopened and reviewed by his successor in office unless the decision is founded on mistakes in matters of fact arising from errors in calculation, or the absence of material testimony afterwards discovered and produced, is well established. (U. S. v. Bank of Metropolis, 15 Pet., 377; *Rollins and Presbrey v. U. S.*, 23 Ct. Cls., 123.)

Attorney General Taney said: "For if a final decision, upon a knowledge of all the facts, made by an officer authorized to decide on claims against the Government, is liable to be opened and reviewed by his successor in office, every change in the officer will produce a new hearing of the claim, and the accounts of the Government will always remain open and unsettled." (2 Op. Atty. Gen., 464; see also 14 Op. Atty. Gen., 275; 18 Int. Rev. Rec., 28, and cases there cited; also 13 Op. Atty. Gen., 388, 457.)

When an account has once been adjusted by the accounting officers, it can not be reopened unless relief is afforded by special act. (4 Op. Atty. Gen., 378; 12 id., 386.)

A decision in the Court of Claims, while it is not binding, is authority for the head of a department to reopen a case. (9 Op. Atty. Gen. (Black), 422.)

The accounting officers of the Treasury are not authorized to reopen accounts for the purpose of correcting decisions upon questions of law subsequently held to be erroneous. (VI Comp. Dec., 91.)

The principle of *res adjudicata* applies to departmental action of a final nature. (20 Op. Atty. Gen., 280; XI Comp. Dec., 459, 676.)

New evidence discovered. (IX Comp. Dec., 107.)

Not the duty of a head of department to make estimates for appropriations to pay claims which the law does not provide for. (*Pitman et al. v. United States*, 20 Ct. Cls., 253.)

Accounting officers can not revise judgments of court. (*O'Grady v. United States*, 22 Wall., 641.)

Subpoenas to witnesses in matters relating to claims.

SEC. 184. Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpoena for a witness being within the jurisdiction of such court, to appear at a time and place in the subpoena stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim.

No payment to person in arrears to the United States.

SEC. 1766. No money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.

Set-offs. (Bonnafon's case, 14 Ct. Cls., 484; Taggart's case, 17 Ct. Cls., 322; 28 Int. Rev. Rec., 162; 17 Op. Atty. Gen., 677; McKnight *v.* United States, 98 U. S., 179.)

Money offered in compromise can not be set off against taxes assessed. (Boughton *v.* United States, 13 Ct. Cls., 284.)

Money due to an employee of the Government, and in the hands of a disbursing officer, can not be attached by a process issued from a State court. (10 Op. Atty. Gen., 120.)

Meaning and scope of Sec. 1766, where a clerk is a judgment debtor of the United States. (26 Op. Atty. Gen., 77.)

Deduction of debt due the United States from any judgment recovered or claim allowed.

[Act of Mar. 3, 1875 (18 Stat., 481).]

That when any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States.

But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment.

And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch.

And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with six per cent interest thereon for the time it has been withheld from the plaintiff.

As to interest, see Stephan's case (26 Int. Rev. Rec., 314), and section 966, page 394.

Sanborn's case, decision of First Comptroller. (28 Int. Rev. Rec., 265.)

Suits of United States against individuals; what credits allowed.

SEC. 951. In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treas-

ury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident.

Section 957, page 414.

United States v. Kimball (101 U. S. (11 Otto), 725); *Western Union Railroad Co. v. United States* (101 U. S., 543; 26 Int. Rev. Rec., 165).

In an action by the United States to recover an alleged debt, the defendant can not recover an affirmative judgment against the Government on a counter claim, although it may be determined that there is a balance due him. (U. S. v. Gillies, 144 Fed. Rep., 991; U. S. v. Pierson, 145 Fed. Rep., 814.)

Priority of United States in insolvent estates.

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Lewis, trustee, v. United States. (92 U. S., 618; 22 Int. Rev. Rec., 186.)

Act of July 1, 1898 (30 Stat., 544-566), to establish a uniform system of bankruptcy throughout the United States, amended by act of July 1, 1898; acts of February 5, 1903, June 15, 1906, and June 25, 1910.

Debts which have priority. (Sec. 64, act of July 1, 1898.)

A discharge in bankruptcy does not release a bankrupt from taxes due. (Sec. 17, act of July 1, 1898.)

The right of the United States to priority of payment does not extinguish or supersede a specific lien. (*United States v. Duncan*, 4 McLean, 607; 9 Op. Atty. Gen., 28.)

The right to priority is not a lien upon the debtor's property, but a right to receive payment out of the general estate or funds of the debtor before other claims are satisfied. (*United States v. Eggleston*, 23 Int. Rev. Rec., 113.)

Procedure in case of property assessed in hands of receiver. (T. D. 667.)

Liability of Executors, etc., to United States.

SEC. 3467. Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

The priority of the United States, under the provisions of sections 3466 and 3467, R. S., extends to all classes of debts, and to all the debtor's estate which comes to the hands of his assignee. The assignee becomes a trustee for the United States, and, when he has notice of the debt due the Government, he can not escape personal liability for the amount of it, to the extent of the value of the assets coming to his hands, if he fails to provide for it before making distribution to other creditors. (*United States v. Barnes*, 31 Fed. Rep., 705.)

Permanent annual appropriations.

SEC. 3689. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively;

and such appropriations shall be deemed permanent annual appropriations.

* * * * *

Refunding moneys erroneously received and covered:

To refund moneys received and covered into the Treasury before the payment of legal and just charges against the same.

* * * * *

Allowances and drawbacks (internal revenue):

Indefinite appropriation to pay allowance or drawback on articles on which any internal duty or tax shall have been paid when said articles are exported under the act of July one, eighteen hundred and sixty-two, chapter one hundred and nineteen [section three thousand four hundred and forty-one].

See as to appropriation to pay drawback on tobacco, section 3386, page 276.
No appropriation is made for paying drawback on stills allowable under act of March 1, 1879.

Refunding taxes illegally collected (internal revenue):

To refund and pay back duties erroneously or illegally assessed or collected under the internal-revenue laws.

Redemption of stamps (internal revenue):

Of such sum of money as may be necessary to repay the amount or value paid for internal-revenue stamps which may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or which through mistake may have been improperly or unnecessarily used.

* * * * *

Application of moneys appropriated.

SEC. 3678. All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

No expenditures in excess of appropriations—Penalty for violation.

SEC. 3679 [*as amended by sec. 4, act of Mar. 3, 1905, and act of Feb. 27, 1906, sec. 3 (34 Stat., 49) (urgent deficiency appropriation act)*]. No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations

are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such Executive Department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than one hundred dollars or by imprisonment for not less than one month.

SEC. 9. [Act of June 30, 1906 (34 Stat., 764) (sundry civil appropriation act).] No act of Congress hereafter passed shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed.

By the act of July 7, 1884, deficiency appropriation act (23 Stat., 254), the Secretary of the Treasury is required to report to Congress at the commencement of each session amount due claimants upon claims allowed in whole or in part.

Unauthorized contracts prohibited.

SEC. 3732. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law, or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

19 Op. Atty. Gen., 650.

Expenditure of balances of appropriations.

SEC. 3690. All balances of appropriations contained in the annual appropriation bills, and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.

Department Circular No. 133, dated December 15, 1903, requires that all unexpended balances of annual appropriations be deposited to the credit of the Treasurer of the United States as soon as practicable after the expiration of the fiscal year for which they were made.

Unexpended balances of appropriations after two years to be covered into Treasury.

[3690a.] **SEC. 5.** [Act of June 20, 1874 (18 Stat., 110).] That from and after the first day of July, eighteen hundred and seventy-four, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have

remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury:

Provided, That this provision shall not apply to permanent specific appropriations. * * *

XI Comp. Dec., 400.

Funds in the hands of disbursing officers. (15 Op. Atty. Gen., 357.)

SEC. 10. [*Act of Mar. 4, 1909 (35 Stat., 1027) (sundry civil appropriation act.)*.] The Secretary of the Treasury shall cause all unexpended balances of appropriations which remained on the books of the Treasury on the first day of July, nineteen hundred and four, except permanent specific appropriations, judgments and findings of courts, trust funds, and appropriations for fulfilling treaty obligations with the Indians, to be carried to the surplus fund and covered into the Treasury: *Provided*, That such sums of said balances as may be needed to pay contracts existing and not fully discharged at the date of this Act shall remain available for said purposes. For the purposes herein declared no appropriation made prior to July first, nineteen hundred and four, shall be construed to be a permanent specific appropriation unless by its language it is specifically and in express terms made available for use until expended.

Advances of public moneys prohibited.

SEC. 3648. No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements.

* * *

XII Comp. Dec., 67.

Assignment of claims void, unless, etc.

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

United States v. Gillis (95 U. S., 407); *Spofford v. Kirk* (97 U. S., 484); *McKnight v. United States* (98 U. S., 185); *Goodman v. Niblack* (102 U. S., 560);

11 Op. Atty. Gen., 520; 16 id., 262); *Lopez v. United States* (35 Int. Rev. Rec., 31; 17 Op. Atty. Gen., 545); *Price v. Forrest* (173 U. S., 410).

Payment to attorney in fact holding unrevoked power of attorney executed prior to allowance of claim good as between the Government and claimant. (*Bailey et al. v. United States*, 109 U. S., 432; 29 Int. Rev. Rec., 420.)

This section does not apply to transfers by operation of law (*Erwin v. United States*, 97 U. S., 392; *Butler v. Goreley*, 146 U. S., 303).

Indorsement and payment of Treasury warrants. (See Dept. Cir. No. 41, Apr. 23, 1902.)

Assignment of claims—laws and decisions considered. (VI Comp. Dec., 101.) 22 Op. Atty. Gen., 637; 25 ibid., 279.

Attorneys before the Treasury Department.

[Extract from the deficiency appropriation act of July 7, 1884 (23 Stat., 258).]

SEC. 3. * * * That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may, after due notice and opportunity for hearing, suspend and disbar from further practice before his Department any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

Drafts in payment of claims to be delivered to claimant, and not to attorneys. (32 Int. Rev. Rec., 325.)

Regulations governing attorneys and agents practicing before the Treasury Department. (Dept. Cir. No. 13, Feb. 6, 1886; Dept. Cir. No. 94, Oct. 14, 1890; 36 Int. Rev. Rec., 327.)

Delivering warrants to attorneys. (25 Op. Atty. Gen., 279.)

Duplicate checks authorized whenever any original check is lost, stolen, or destroyed.

Sections 3646 and 3647, amended by the act of February 23, 1909. (35 Stat., 643.) Regulations No. 2, revised, page 100.

Letters, packages, etc., on Government business sent free—Penalty envelopes.

SEC. 5. [Act of Mar. 3, 1877 (19 Stat., 335).] That it shall be lawful to transmit through the mail free of postage any letters, packages, or other matters relating exclusively to the business of the Government of the United States: *Provided*, That every such letter or package, to entitle it to pass free, shall bear over the words "Official business" an endorsement showing also the name of the Department, and, if from a bureau or office, the names of the Department, and bureau or office, as the case may be, whence transmitted. And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor, and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction.

SEC. 6. That for the purpose of carrying this act into effect, it shall be the duty of each of the Executive Departments of the United

States, to provide for itself and its subordinate officers the necessary envelopes; and in addition to the endorsement designating the Department in which they are to be used, the penalty for the unlawful use of these envelopes shall be stated thereon.

15 Op. Atty. Gen., 262; 16 ibid., 455. 17 ibid., 255, 264.
As to the Philippines, 24 ibid., 534.

Section 29 of the act of March 3, 1879 (20 Stat., 355), amended by the act of July 5, 1884 (23 Stat., 156), extends the provisions of the above act to all officers of the United States Government, not including Members of Congress, except to pension agents or other officers who receive a fixed allowance for their service, including expenses for postage. Includes United States Commissioners. (17 Op. Atty. Gen., 183, 631.)

Abuse of official frank. (Circular letter, Nov. 25, 1895; 41 Int. Rev. Rec., 489.)

Unlawful use of penalty envelopes. (Circular No. 344; 36 Int. Rev. Rec., 149; Circular No. 599; T. D., 319.)

The right to use penalty envelopes. (T. D., 265; T. D., 833.)

Fraudulent use of official envelopes. (Sec. 227, act of Mar. 4, 1909, 35 Stat., 1134.)

SEC. 2. [Act of Mar. 3, 1883 (22 Stat., 563).] * * * And it shall be the duty of the respective Departments to inclose to Senators, Representatives, and Delegates in Congress, in all official communications requiring answers, or to be forwarded to others penalty envelopes addressed as far as practicable, for forwarding or answering such official correspondence.

Inclosing envelopes with return addresses. (Act of July 5, 1884, 23 Stat., 158.)

Government to have priority in transmission of telegrams.

SEC. 5266. Telegrams between the several Departments of the Government and their officers and agents, in their transmission over the lines of any telegraph company to which has been given the right of way, timber, or station lands from the public domain shall have priority over all other business, at such rates as the Postmaster-General shall annually fix. And no part of any appropriation for the several Departments of the Government shall be paid to any company which neglects or refuses to transmit such telegrams in accordance with the provisions of this section.

Official telegraphing. (Dept. Cir. No. 160, Oct. 20, 1893.)

Government rates for telegraphing. (Dept. Cir. 100, Aug. 5, 1902. Regulations No. 2, revised July 1, 1908, p. 82.)

Telegrams of a personal character addressed to Office of the Commissioner of Internal Revenue must be prepaid. Where a response to such dispatches is required payment therefor must be provided for by the person in interest. (T. D., 19221, 1898.)

In addressing official telegraphic messages, it is necessary to use only the words "Commissioner Internal Revenue, Washington, D. C.", the name of the Commissioner or of a deputy commissioner being superfluous. (T. D., 444, 1901.)

Disposition of useless papers.

The Act to authorize and provide for the disposition of useless papers in the Executive Departments, approved February 16, 1889 (25 Stat., 672; 35 Int. Rev. Rec., 62; 1 Supp. R. S., 644), provides that whenever there shall be in any one of the executive departments an accumulation of papers, which are not needed or useful in the transaction of the current business, and have no permanent value or historical interest, it shall be the duty of the head of the department to submit to Congress a report of that fact, accompanied by a concise statement of the condition and character of such papers.

After destruction has been authorized by Congress, it is the duty of the head of the department to sell such papers as waste paper, after due publication, to pay the proceeds into the Treasury, and make report to Congress.

This act was amended by the sundry civil appropriation act of March 2, 1895 (28 Stat., 933), "so as to include in its provisions any accumulation of files of papers of a like character therein described now or hereafter in the various public buildings under the control of the several executive departments of the Government."

CHAPTER 5.

Officers, clerks, and employees—Extra services—Holding two offices—Prohibition as to business—Penalty for prosecuting claims against the Government—Perquisites—Fees—Political contributions—Presents to superiors, etc.

President authorized to prescribe regulations.

SEC. 1753. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

Preference of persons disabled in military or naval service.

SEC. 1754. Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.

Not repealed by the civil-service act. (Sec. 7, act Jan. 16, 1883. 22 Stat., 403.)

17 Op. Atty. Gen., 194; 27 Op. Atty. Gen., 490, July 28, 1909; Keim v. U. S., 117 U. S., 290, affirming 33 Ct. Cls., 174.

Executive order, preference of veterans. (Int. Rev. Cir. No. 644; T. D. 681.)

The matter of capability and personal fitness is a matter of judgment for the appointing power. (19 Op. Atty. Gen., 318.)

Transfer of duties and preference of soldiers' and sailors' widows.

SEC. 3. Act of August 15, 1876. (19 Stat., 169.) That whenever, in the judgment of the head of any department, the duties assigned to a clerk of one class can be as well performed by a clerk of a lower class or by a female clerk, it shall be lawful for him to diminish the number of clerks of the higher grade and increase the number of the clerks of the lower grade within the limit of the total appropriation for such clerical service: *Provided*, That in making any reduction of force in any of the executive departments, the head of such department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors.

Employees to be paid from specific appropriations only—Civil officers, clerks, etc., elsewhere employed not to be detailed for duty in the District of Columbia.

[Extract from legislative, executive, and judicial appropriation act, approved Aug. 5, 1882. (22 Stat., 255.)]

SEC. 4. That no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall after the first day of October next be employed in any of the executive departments, or subordinate bureaus or offices thereof at the seat of government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal services for each fiscal year; and no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer or other employee shall hereafter be employed at the seat of Government in any executive department or subordinate bureau or office thereof, or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services, and after the first day of October next, section one hundred and seventy-two of the Revised Statutes, and all other laws and parts of laws, inconsistent with the provisions of this act, and all laws and parts of laws authorizing the employment of officers, clerks, draughtsmen, copyists, messengers, assistant messengers, mechanics, watchmen, laborers or other employees at a different rate of pay or in excess of the numbers authorized by appropriations made by Congress, be, and they are hereby, repealed; and thereafter all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited; and thereafter all moneys accruing from lapsed salaries or from unused appropriations for salaries, shall be covered into the Treasury: *Provided*, That the sums herein specifically appropriated for clerical or other force heretofore paid for out of general or specific appropriations may be used by the several heads of departments to pay such force until the said several heads of departments shall have adjusted the said force in accordance with the provisions of this act; and such adjustment shall be effected before October first, eighteen hundred and eighty-two. And in making such adjustment the employees herein provided for shall, as far as may be consistent with the interests of the service, be apportioned among the several States and Territories according to population: *Provided, further*, That any person performing duty in any capacity as officer, clerk, or otherwise in any department at the date of the passage of this act, who has heretofore been paid from any appropriation made for contingent expenses or for any contingent or general purpose, and whose office or place is specifically provided for herein, under the direction of the head of that department may be continued in such office, clerkship, or employment without a new appointment thereto, but shall be charged to the quotas of the several States and Territories from which they are respectively appointed

and nothing herein shall be construed to repeal or modify section one hundred and sixty-six of the Revised Statutes of the United States.

It is provided in the same act (22 Stat., 230) that nothing in this section shall be construed to prevent the Commissioner of Internal Revenue from detailing one revenue agent for duty in his office.

Section 166, R. S., amended by section 3, act of May 28, 1896 (29 Stat., 179), allowing temporary detail of clerks.

Clerks can not be detailed to examine collectors' offices. (Collins's case, 3 Lawrence Dec., 241; 29 Int. Rev. Rec., 43.)

When Congress appropriates a sum "in full compensation" of the salary of a public officer, the incumbent can not recover an additional sum in the Court of Claims, notwithstanding a prior statute fixes the salary at a larger amount than the sum so appropriated. (United States *v.* Fisher, 109 U. S., 143.)

Transfers and details.

[Extract from the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1907, approved June 22, 1906. (34 Stat., 389, 449.)]

SEC. 5. It shall not be lawful hereafter for any clerk or other employee in the classified service in any of the Executive Departments to be transferred from one Department to another Department until such clerk or other employee shall have served for a term of three years in the Department from which he desires to be transferred.

27 Op. Atty. Gen., 421.

SEC. 6. Hereafter it shall be unlawful to detail civil officers, clerks, or other subordinate employees who are authorized or employed under or paid from appropriations made for the military or naval establishments, or any other branch of the public service outside of the District of Columbia, except those officers and employees whose details are now specially provided by law, for duty in any bureau, office, or other division of any Executive Department in the District of Columbia, except temporary details for duty connected with their respective offices.

The provisions of this act with regard to transfer of clerks and employees are not applicable to the Philippine Commission or to the Isthmian Canal Commission. (26 Op. Atty. Gen., 209.)

The Secretary of the Treasury is authorized to use for, and in connection with, the enforcement of the laws relating to the Treasury Department and the several branches of the public service under its control, not exceeding at any one time, three persons paid from the appropriation for the collection of customs, three persons paid from the appropriation for salaries and expenses of internal-revenue agents or from the appropriation for the foregoing purpose, and three persons paid from the appropriation for suppressing counterfeiting and other crimes, but not exceeding four persons so detailed shall be employed at any one time hereunder: *Provided*, That nothing herein contained shall be construed to deprive the Secretary of the Treasury from making any detail now otherwise authorized by existing law. (Extract from sundry civil appropriation act for 1911; act of June 25, 1910; 36 Stat., 713.)

The same provision continued in the Sundry Civil Appropriation Act for 1912, Act of March 4, 1911, providing for the use of four persons instead of three paid from the said several appropriations, but not exceeding six to be detailed at any one time.

No salary for office not authorized.

SEC. 1760. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.

Accepting voluntary service prohibited.

[SEC. 1760a.] [Act of May 1, 1884 (23 Stat., 17). *Urgent deficiency appropriation act.*] * * * And hereafter no Department or officer of the United States shall accept voluntary service for the Government, or employ personal service in excess of that authorized by law except in cases of sudden emergency involving the loss of human life or the destruction of property.

Reproduced in sec. 3679, amended, p. 426.

Public holidays.

SEC. 993. [Revised Statutes relating to District of Columbia.] The following days, namely: The first day of January, commonly called New Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; and any day appointed or recommended by the President of the United States as a day of public fast or thanksgiving, shall be holidays within the District.

* * * * *

The 22d of February made a holiday. (Act of Jan. 31, 1879; 20 Stat., 277.)

Inauguration Day made a holiday. (Act of June 18, 1888; 25 Stat., 185.)

"Decoration Day" made a holiday. (Act of Aug. 1, 1888; 25 Stat., 353.)

The first Monday in September (labor's holiday) made a holiday. (Act of June 28, 1894, 28 Stat., 96.)

Legal holidays falling on Sunday the next day shall be a holiday. (Act of Dec. 20, 1881; 22 Stat., 1.)

As to ministerial acts performed on Sunday and holidays, see *In re Worthington* (23 Int. Rev. Rec., 233).

Holidays; hours of labor in Executive Departments. (25 Op. Atty. Gen., 40.)

The joint resolution of January 6, 1885 (23 Stat., 516) provides that per diem employees of the Government on duty at Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive the same pay as on other days.

The joint resolution of February 23, 1887 (24 Stat., 644), provides that per diem employees of the Government, on duty at Washington or elsewhere in the United States, shall be allowed "Memorial" or "Decoration Day," and the fourth of July, as holiday, and shall receive the same pay as on other days. (11 Comp. Dec., 393.)

Pay of per diem employees Labor Day. (Dept. Cir. No. 49, Aug. 31, 1910.)

Double salaries—Compensation for extra services—Extra allowances—Perquisites, etc.—Prohibition.

SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

Talbot's case (10 Ct. Cls., 426).

The statutes do not prohibit a person from drawing the salaries of two distinct offices which he legitimately holds. (5 Op. Atty. Gen., 765; 6 ibid., 80; 9 ibid., 507; 10 ibid., 446; 15 ibid., 306; 16 ibid., 7; *Collins v. United States*, 15 Ct. Cls., 22.)

In construing statutes restraining the Executive from giving dual or extra compensation courts have aimed to carry out the legislative intent by giving them sufficient flexibility not to injure the public service and sufficient rigidity to prevent Executive abuse. (*Landram v. United States* (1880), 16 Ct. Cls., 74; 27 Int. Rev. Rec., 80.)

No person who holds an office the salary or annual compensation attached to which amounts to the sum of \$2,500 shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or here-

after specially authorized thereto by law, but this shall not apply to retired officers of the Army or Navy. (See sec. 2, act of July 31, 1894; 28 Stat., 205; 16 Comp. Dec., 823.)

Holding State offices by officers or employees. (18 Op. Atty. Gen., 3.)

SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

Section 170 prohibits payment to department clerks for extra services unless authorized by law.

An agreement by the Secretary of the Interior to pay a clerk in his department for services rendered to the Government by labors abroad, the clerk still holding his place and drawing his pay as clerk in the Interior, held void. (*Stanbury v. United States*, 8 Wall., 33.)

See also disbursing clerk's case (5 Lawrence Dec., 401); Wade's case (27 Int. Rev. Rec., 16); Herndon's claim (26 ibid., 314).

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The construction which has been given to these statutes (secs. 1763, 1764, 1765) is that the intent and effect of them is to forbid officers holding one office to receive compensation for the discharge of duties belonging to another, or additional pay, extra allowance, or compensation for such other services or duties where they hold the commission of but a single office, and by virtue of that office, or in addition to the duties of that office, have assigned to them the duties of another office. According to the decisions, however, if an officer holds two distinct commissions, and thus two distinct offices, he may receive the salary for each. *Converse v. United States*, leading case on questions of additional compensation (21 Howard, 463; 15 Op. Atty. Gen., 308, 608). *United States v. Brindle* (110 U. S., 689). *Hartson v. United States* (21 Ct. Cls., 451; 32 Int. Rev. Rec., 238). In this case the Supreme Court went further than it had gone in any previous decision and held that where a person holds two separate employments, though not technically offices, he is entitled to the compensation of both. *Saunders v. United States* (120 U. S., 126; 33 Int. Rev. Rec., 63); *Collins* case (15 Ct. Cls., 22); *Whitaker v. United States* (27 Ct. Cls., 524; 43 Int. Rev. Rec., 193).

Deputy marshal not an "officer," and can be paid for services in assisting the collector in destroying illicit stills. (Brown's case, 28 Int. Rev. Rec., 19.)

Deputy collector not an "officer" within the meaning of section 1765. (*Landram v. United States*, 16 Ct. Cls., 74; 27 Int. Rev. Rec., 80.)

Payment of double compensation to a person holding two appointments at the same time. (10 Comp. Dec., 726; see also 11 ibid., 392.)

[SEC. 1765a.] [Sec. 3, act of Mar. 20, 1874 (18 Stat., 109; 1 Supp. R. S., 47).] That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law:

Provided, That this shall not be construed to prevent the employment and payment by the Department of Justice of district attorneys as now allowed by law for the performance of services not covered by their salaries or fees.

This act relates only to "civil officers." It does not extend to the clerk of a supervisor of internal revenue. (*Hedrick v. United States*, 16 Ct. Cls., 88.)

Payment of expenses of clerks, officers, etc., sent away as witnesses.

SEC. 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed.

Expenses can be taxed in the bill of costs for the travel or attendance of Government clerks. (*United States v. Sanborn*, 135 U. S., 271; 36 Int. Rev. Rec., 142.)

Deputy collectors are included under the words "other officer of the United States" according to the ruling of the department.

Expenses of deputy collectors incurred in attendance upon preliminary examination before U. S. Commissioners in obedience to subpoenas. (T. D., 1640, XVI Comp. Dec., 838.)

The expenses which a deputy collector may properly charge in his account of actual expenses as a witness are *those only which are, after he is regularly subpoenaed, incurred in traveling to, attendance upon, and returning from the court or commissioner hearing the case.* (Instructions Department of Justice April 1, 1904, to United States marshals, attorneys, etc., p. 123.)

Expenses incurred by departmental clerk in obeying subpoena. (XVI Comp. Dec., 672.)

No mileage beyond traveling expenses allowed.

[Extract from the Army appropriation act for the fiscal year ending June 30, 1875. Act of June 16, 1874. (18 Stat., 72.)]

* * * *Provided*, That only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, and all allowances for mileages and transportation in excess of the amount actually paid are hereby declared illegal; and no credit shall be allowed to any of the disbursing officers of the United States for payment or allowances in violation of this provision. * * *

Certain business and emoluments forbidden to clerks in the Treasury department.

SEC. 244. Every clerk employed in the Treasury Department who carries on any trade or business in the funds or debts of the United States, or of any State, or in any kind of public property, or who takes or applies to his own use any emolument or gain for negotiating or transacting any business in the Department, shall be deemed guilty of a misdemeanor, and punished by a fine of five hundred dollars and removal from office.

Sections 1788, 1789, Sec. 103 Criminal Code, Act of March 4, 1909, p. 412.

Officers and clerks receiving compensation in matters before the departments; penalty.

(SEC. 1782.) SEC. 113. [*Act of Mar. 4, 1909 (35 Stat., 1109), Criminal Code.*] Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any

office of honor, trust, or profit under the Government of the United States.

Contracts with the Government by executive officers. (14 Op. Atty. Gen., 482.)

Prohibition against officers taking money or other valuable consideration for procuring places or contracts. (Sec. 1781 superseded by sec. 112, act of Mar. 4, 1909 (Criminal Code).

Officers and employees of Internal Revenue Bureau prohibited from acting as agents for surety companies. (Treas. Dec. (1899), No. 21025.)

Officers prosecuting claims against the United States; penalty.

(SEC. 5498.) SEC. 109. [*Act of Mar. 4, 1909 (35 Stat., 1107), Criminal Code.*] Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Burton *v.* United States; 202 U. S., 344; indictment against a U. S. Senator for practicing before a federal department.

Persons formerly in the Departments not to prosecute claims in them within two years.

SEC. 190. It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employé in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employé, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employé.

See 20 Op. Atty. Gen., 696.

Restriction on payment for services; oath to be required.

SEC. 1790. No officer or clerk whose duty it is to make payments on account of the salary or wages of any officer or person employed in connection with the customs or the internal-revenue service, shall make any payment to any officer or person so employed on account of services rendered, or of salary, unless such officer or person so to be paid has made and subscribed an oath that, during the period for which he is to receive pay, neither he, nor any member of his family, has received, either personally or by the intervention of another party, any money or compensation of any description whatever, nor any promises for the same, either directly or indirectly, for services rendered or to be rendered, or acts performed or to be performed, in connection with the customs or internal revenue; or has purchased, for like services or acts, from any importer, if affiant is connected with the customs, or manufacturer, if affiant is connected with the internal-revenue service, consignee, agent, or custom-house broker, or other person whomsoever, any merchandise, at less than regular retail market prices therefor.

Accounts for services of clerks, etc., must be verified.

SEC. 2693. No account for the compensation for services of any clerk, or other person employed in any duties in relation to the collection of the revenue, shall be allowed, until such clerk or other person shall have certified, on oath, that the same services have been performed, that he has received the full sum therein charged to his own use and benefit, and that he has not paid, deposited, or assigned, or contracted to pay, deposit, or assign, any part of such compensation to the use of any other person, or in any other way, directly or indirectly, paid or given, or contracted to pay or give, any reward or compensation for his office or employment, or the emoluments thereof.

Prohibition of contributions, presents, etc., to official superiors.

SEC. 1784. No officer, clerk, or employé in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employés in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ.

Penalty for officers and employees giving to or receiving from other officers money, etc., for political purposes.

SEC. 6. [Act of Aug. 15, 1876 (19 Stat., 169).] That all executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government any money or property or other thing of value for political purposes; and any such officer or employee who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars.

This act not unconstitutional. (*United States v. Curtis*, 28 Int. Rev. Rec., 273; *Ex parte Curtis*, 106 U. S., 371; 29 Int. Rev. Rec., 18.)

Members of Congress not included. (17 Op. Atty. Gen., 419.)

The civil-service act (act of Jan. 16, 1883; 22 Stat., 403) makes political assessments of Federal officers, clerks, and employees a misdemeanor. The following are the provisions of the law on the subject:

SEC. 2, paragraph 2, clause 5. That no person in the public service is for that reason under any obligation to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Sections 118, 119, 120, 121, 122, of the act of March 4, 1909 (35 Stat., 1088), Criminal Code, reproducing sections 11, 12, 13, 14 and 15 of the civil service act.

Official interference in political movements. (Order of President Cleveland, Dept. Cir. No. 17, Sept. 1, 1886.)

Employees in the competitive classified service shall take no active part in political management or in political campaigns. (Dept. Circular No. 21, Mar. 31, 1908.)

Warning against political assessments and partisan activity of office holders. (Dept. Cir. No. 60, Oct. 25, 1910, T. D. 31010.)

Order of Commissioner Yerkes, dated December 9, 1905, addressed to collectors of internal revenue:

"So far as the classified service is concerned, employees must absolutely refrain from political activity."

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